THE MADRAS LAW JOURNAL

THE SUPREME COURT OF INDIA.

(Criminal Appellate Jurisdiction.)

PRESENT:—*Y. V. Chandrachud, CJ. and A. P. Sen, J.*

Muniappan ... *Appellant**

v.

State of Tamil Nadu .. *Respondent.*

(A) *Criminal Procedure Code,* 1973 (*II of* 1974), *section* 235 (2)—*Question of sentence—Obligation on Court to hear accused imposed by section* 235 (2)—*How discharged.*

The obligation to hear the accused on the question of sentence which is imposed by section 235 (2), Criminal Procedure Code, is not discharged by putting a formal question to the accused as to what he has to say on the question of sentence. The Judge must make a genuine effort to elicit from the accused all information which will eventually bear on the question of sentence. It is the bounden duty of the Judge to cast aside the formalities of the Court-scene and approach the question of sentence from a broad sociological point of view. The occasion to apply the provisions of section 235 (2) arises only after the conviction is recorded. Questions which the Judge can put to the accused under section 235 (2) and the answers which the accused makes to those questions are beyond narrow constraint of the Evidence Act. The Court, while on the question of sentence, is in an altogether different domain in which facts and factors which operate are of an entirely different order than those which come into play on the question of conviction. [*Para.*2.]

(B) *Criminal Procedure Code,* 1973 (*II of* 1974), *section* 354 (3)—*Penal Code* (*XLV of* 1860), *section* 302—*Murder being terrific— If adequate reason for imposing death sentence.*

All murders are terrific and if the fact of the murder being terrific is an adequate reason for imposing the death sentence, then every murder shall have to be visited with that sentence. In that event, death sentence will become the rule, not an exception and section 354 (3) will become a dead letter. [*Para.* 2.]

(C) *Natural justice—Criticism of conduct of police officers —Opportunity to explain conduct must be given.*

The *ex parte* strictures passed by the High Court are likely to involve the two police officers or at least one of them into grave consequences. They should have been given an opportunity to explain themselves before the High Court persuaded itself to make such scathing criticism on their conduct. [*Para.* 5.]

(D) *Criminal Procedure Code,* 1973 (*II of* 1974), *section* 386—*Conduct of lawyers appearing before the lower Courts—High Court passing judgment on — Propriety.*

It is not the normal function of the High Court to pass judgment on the conduct of lawyers who appear before the lower Courts. One could understand if the High Court were to make its guarded observations on the conduct of lawyers appearing before it. [*Para.* 6.]

A. T. M. Sampath and *P. N. Ramalingam,* Advocates, for Appellant.

A. V. Rangam, Advocate, for Respondent.

The Judgment of the Court was delivered by

Chandrachud, CJ. — The appellant, Muniappan, was convicted by the learned Sessions Judge, Dharmapuri, under section 302 of the Penal Code and was sentenced to death on the charge that he had committed the murder of his mother's brother also called Muniappan and his son Chinnaswamy. The conviction for murder and the sentence of death having been confirmed by the High Court of Madras by a judgment dated 23rd October, 1979, this appeal has been filed by the accused by special leave The leave is limited to the question of sentence.

*Crl. A. No. 221 of 1981. 18*th March,* 1981.

2. The judgments of the High Court and the Sessions Court, in so far as the sentence is concerned, leave much to be desired. In the first place, the Sessions Court overlooked the provision contained in section 354 (3) of the Code of Criminal Procedure, 1973, which provides, in so far as is relevant, that when the conviction is for an offence punishable with death, the judgment shall in the case of sentence of death state special reasons for such sentence. The learned Sessions Judge, in a very brief paragraph consisting of two sentences, has this to say on the question of sentence:

> "When the accused was asked on the question of sentence, he did not say anything. The accused has committed terrific double murder and so no sympathy can be shown to him."

The judgment of the Sessions Judge is in Tamil but we understand from the learned counsel, who appear in the case and both of whom understand Tamil well enough, that the Tamil word "Bhayankaram" has been rightly translated as "terrific". We plead our inability to understand what is meant by a "terrific" murder because all murders are terrific and if the fact of the murder being terrific is an adequate reason for imposing the death sentence then every murder shall have to be visited with that sentence. In that event, death sentence will become the rule, not an exception and section 354 (3) will become a dead letter. We are also not satisfied that the learned Sessions Judge made any serious effort to elicit from the accused what he wanted to say on the question of sentence. All that the learned Judge says is that "when the accused was asked on the question of sentence, he did not say anything". The obligation to hear the accused on the question of sentence which is imposed by section 235 (2) of the Criminal Procedure Code is not discharged by putting a formal question to the accused as to what he has to say on the question of sentence. The Judge must make a genuine effort to elicit from the accused all information which will eventully bear on the question of sentence. All admissible evidence is before the Judge but that evidence itself often furnishes a clue to the genesis of the crime and the motivation of the criminal. It is the bounden duty of the Judge to cast aside the formalities of the Court-scene and approach the question of sentence from a broad sociological point of view. The occasion to apply the provisions of section 235 (2) arises only after the conviction is recorded. What then remains is the question of sentence in which not merely the accused but the whole society has a stake. Questions which the Judge can put to the accused under section 235 (2) and the answers which the accused makes to those questions are beyond the narrow constraints of the Evidence Act. The Court, while on the question of sentence, is in an altogether different domain in which facts and factors which operate are of an entirely different order than those which come into play on the question of conviction. The Sessions Judge, in the instant case, complied with the form and letter of the obligation which section 235 (2) imposes, forgetting the spirit and substance of that obligation.

3. The High Court condemned the murders in terms equally strong by calling them "cold blooded" and thought that its duty to consider the propriety of death sentence began and ended with that assertion. Its failure to see the failings of the Sessions Court in the matter of sentencing led to an unexamined confirmation of the death sentence.

4. Coming to the judgment of the High Court itself, there are certain features of it which need a close reflection. One of the questions before the High Court was as to the time when the double murder was committed because, upon that circumstance depended the veracity of the eye-witnesses. The doctor who performed the post-mortem examination stated in his evidence that the deceased must have taken their food about four or five hours before their death. The case of the prosecution was that the murders were committed at about 9.00 P. M. P. W. 1, who is the son of the deceased Muniappan, stated in his evidence that the deceased had taken their food at 8. 30 P. M. This was a very important aspect of the case to which the High Court should have applied its mind with care. Instead, it took an extempore expedient by saying: "Both the deceased might have died a couple of hours after they sustained the injuries at 9.00 P. M." It is impossible to appreciate how, after being shot in the chest and receiving the kind of injuries which are described in the post-mortem report, the deceased could have survived for a couple of hours after they were shot.

5. Yet another question which had an important bearing on the case was as to the delay caused in filing the F. I. R. The case of

the prosecution is that P. W. 1 went to the Police Station promptly but the solitary police constable who was present there directed him to go to the village Munsif to have his complaint recorded. Now, the record of the Police Station shows that a Sub-Inspector of Police was also present at the Police Station, which falsifies the evidence that only a police constable was present at the Police Station at the material time and, therefore, the F. I. R. could not be recorded. The High Court has dealt with this aspect of the matter thus:

> "In passing, we may mention that this is a grave dereliction of duty on the part of the policeman who was in charge of the police station at that time and is a matter that ought to be enquired into by the higher authorities. We hope that suitable directions will be issued to subordinate officers in this district to prevent a recurrence of such lapses on the part of policemen when reports of cognizable offences are given."

The High Court added that the Inspector of Police was not on good terms with the Sub-Inspector and, therefore, the former made a false entry that the latter was present at the police station, which according to the High Court was a serious matter which required to be probed by the Senior Officers. We are not quite sure whether there is credible evidence on record to show any enmity between the Inspector and the Sub-Inspector and whether the High Court merely relied on the statement made by Counsel for the State that the relations between the two Police Officers were not cordial. Whatever that may be, we do not think that the High Court has explained satisfactorily why the F. I. R. was not recorded at the police station when P. W. 1 went there. The *ex parte* strictures passed by the High Court are likely to involve the two Police Officers or at least one of them into grave consequences. They should have been given an opportunity to explain themselves before the High Court persuaded itself to make such scathing criticism on their conduct.

6. There is one more aspect of the judgment of the High Court, which, with great respect we are unable to appreciate. A question arose before the High Court as to whether a "muchilikka" bears the signature of the appellant. The High Court compared the admitted signatures of the appellant with the disputed signature and came to the conclusion that the disputed signature was of the appellant himself. The High Court castigated the Public Prosecutor who conducted the prosecution in the Sessions Court by saying that he had not followed the cross-examination of P. W. 1 "with attention" and had not chosen to bring to the notice of P. W. 1 that the accused had signed the muchilikka, Ext. P-1. We do not know how the High Court came to know that the Public Prosecutor was not following the cross-examination of the witness with attention, but we can guess why the High Court made that observation. It added in parenthesis: "such lapses on the part of this Public Prosecutor have become frequent and have been commented upon by us, and we hope that at least hereafter he will take some interest in the cases which he is conducting." It is not the normal function of the High Court to pass judgment on the conduct of lawyers who appear before the lower Courts. One could understand if the High Court were to make its guarded observations on the conduct of lawyers appearing before it. But how the learned Judges of the High Court had, in their capacity as Judges of the High Court, come to know that "such lapses on the part of this Public Prosecutor have become frequent........", we are unable to understand.

7. These various matters make it unsafe to confirm the sentence of death imposed upon the appellant. The reasons given by the learned Sessions Judge for imposing the death sentence are not special reasons within the meaning of section 354 (3) of the Criminal Procedure Code, and we are not sure whether, if he were cognisant of his high responsibility under that provision, he would have necessarily imposed the death sentence. Accordingly, we set aside the sentence of death and sentence the appellant to imprisonment for life.

V.K. —— *Appeal allowed.*

THE SUPREME COURT OF INDIA.

(Criminal Appellate Jurisdiction.)

PRESENT:—*R. S. Sarkaria and O. Chinnappa Reddy, JJ.*

State of Tamil Nadu .. *Appellant**

v.

S. Shanmugham Chettiar and another .. *Respondents.*

(A) *Prevention of Food Adulteration Rules* (1955), *Appendix B, Clause A.*17.11—*Gingelly oil—Sample on analysis, three months after taking of sample, found to contain* 6.2% *of free fatty acid—Conviction on the basis of—Legality.*

The sample of gingelly oil was taken on 1st November, 1969, and the analysis by the Director, Central Food Laboratory was on 6th February, 1970. The District Magistrate and the High Court (the lower Courts) thought that although the free fatty acid content was 6.2% on the date when the Director analysed the oil, it could not be said to have been established that on the date when the sample was taken by the Food Inspector the free fatty acid content exceeded 3%. According to them it could well be that the free fatty acid content increased due to natural causes. On appeal by the State,

Held, the lower Courts were not justified in acquitting the accused. [*Para.* 8.]

There was nothing in the evidence, nor had anything been show from any scientific work which would suggest that the free fatty acid content would so rapidly increase in the space of about three months. On the other hand according to the New Encyclopaedia Britannica, Vol. 13 (pp. 526-527) it was only after prolonged exposure to air and light that there might be some discernible chemical changes in Gingelly (Til; or sesame) oil. There was nothing to indicate that the samples in the present case were not packed as required by the Rules. [*Para.* 8.]

(B) *Prevention of Food Adulteration Act* (*XXXVII of* 1954), *section* 16 (1) (a) *read with section* 7 (i) *and section* 2 (i) (1) — *Offence under— Appeal against concurrent order of acquittal—Conviction by Supreme Court after* 10 *years—Proper sentence.*

Held on facts, that a nominal sentence of a fine of Rs. 100, in default to undergo simple imprisonment for two weeks, for a conviction under section 16 (1) (*a*) read with section 7 (*i*) and section 2 (*i*) (1) of the Prevention of Food Adulteration Act, would suffice as the Supreme Court was interfering with a concurrent order of acquittal more than ten years after the commission of the offence. [*Para.* 8.]

A. V. Rangam, Advocate, for Appellant.

A. T. M. Sampath, Advocate, for Respondents.

The Judgment of the Court was delivered by

Chinnappa Reddy, J.—On 1st November, 1969, a sample of gingelly oil was purchased by the Food Inspector, Madurai Municipality from the shop of the first respondent, who is now reported to be dead and against whom this appeal has, therefore, abated. At that time respondent No. 2 was attending to the business. After completing the necessary formalities the Food Inspector arranged to send one part of the sample to the Public Analyst at Madras for analysis. The sample was analysed by the Public Analyst on 11th November, 1969, and it was reported by him that it contained 5.1% of Free Fatty Acid as against the limit of 3.0 per cent. permissible under clause A.17.11 of Appendix B to the Prevention of Food Adulteration Rules, 1955. In his report he also mentioned that the sample was properly sealed, it was aid-and-moisture-tight and packed in thick paper so as to be proof against light, and, the Free Fatty Acid content of the oil would, therefore, remain unchanged for several months. On receipt of the Public Analyst's report a complaint was filed against the two respondents for an offence under section 16 (1) (*a*) and section 7 (*i*) read with section 2 (*i*) (*a*) and clause A.17.11 of Appendix 'B' to the Prevention of Food Adulteration Rules. Both the respondents denied the offence. The second respondent

*Crl. A. No. 115 of 1975.

22nd September, 1980.

stated that he signed on the various documents produced by the prosecution as he was asked to do so by the Inspector. He did not read the contents of those documents. The brother of the second respondent was examined as a defence witness and he stated that he was in the shop when the Food Inspector came there and purchased the sample and that at the time of the sale the Food Inspector was told that the gingelly oil was not meant to be used as an article of food but was meant for "oil bath".

2. At the trial a request was made by the respondents that another part of the sample which had been produced by the Food Inspector in the Court might be sent to the Director, Central Food Laboratory, Calcutta, for analysis. It was sent as desired. The sample was analysed by the Director, Central Food Laboratory, Calcutta, on 6th February, 1970. According to his report the gingelly oil contained 6·2% of Free Fatty Acid and was therefore, adulterated.

3. The learned District Magistrate, Madurai, acquitted both the respondents observing that the Free Fatty Acid had increased from 5.1% to 6.2 per cent. between 11th November, 1969 and 6th February, 1970, and it was, therefore, likely that the Free Fatty Acid content in the oil might have similarly increased between 1st November, 1969, when the sample was taken and 11th November, 1969, when the sample was analysed by the Public Analyst, Madras. On that ground, the District Magistrate held that it was not possible to say that the prosecution had established that on the date when the sample was taken the Free Fatty Acid content of the oil exceeded 3%. The State preferred an appeal to the Madras High Court against the order of acquittal. The High Court confirmed the order of acquittal for the same reason as that given by the District Magistrate. The State has filed this appeal after obtaining special leave of this Court under Article 136 of the Constitution.

4. Under section 2 (*i*) (*l*) (before it was amended in 1976) of the Prevention of Food Adulteration Act, 1954, an article of food is deemed to be adulterated.

"If the quality of purity of the article falls below the prescribed standard or its constituents are present in quantities which are in excess of the prescribed limits of variability".

5. Paragraph A. 17.11 of Appendix 'B' to the Rules made under the Prevention of Food Adulteration Act, prescribes the standard in the case of Til oil (Gingelly or Sesame oil) and to the extent relevant it reads as follows :

"A.17.11.—Til oil (Gingelly or Sesame oil) means the oil expressed from clean and sound seeds of Til (Sesame) Indicum), black, brown, white, or mixed. It shall be clear, free from rancidity, suspended or other foreign matter, separated water, added colouring or flavouring substances, or mineral oil. It shall conform to the following standards:

[(*a*)	Butyro-refractometer reading at 40°C	58.0 to 61.0
(*b*)	Sapanification value	188 to 193
(*c*)	Iodine value	105 to 115
(*d*)	Unsapanifiable matter ..	Not more than 1.5 per cent.
(*e*)	free fatty acid as Oleic acid ..	Not more than 3.0 per cent.
(*f*)	Bellier test (Turbidity temperature—Acetic acid method).	Not more than 22°C.]"

6. Now, a sample of food purchased by a Food Inspector has to be divided by him into 3 parts and each part has to be marked sealed and fastened separately. Before the Act was amended in 1976, one part was to be delivered to the person from whom the sample was taken, another part was to be sent for analysis to the Public Analyst and the third part was to be retained with the Food Inspector to be produced by him in case legal proceedings were taken or it became necessary to send it for analysis to the Director of the Central Food Laboratory. The Public Analyst was required to deliver a report of the result of his analysis and this report was ordinarily the foundation of the prosecution by the Food Inspector. After the institution of the prosecution, the accused was was given the right to request the Court to send that third part of the sample retained by the Food Inspector to the Director, Central Food Laboratory for

a certificate. The Director, Central Food Laboratory was required to send to the Court a certificate specifying the result of his analysis and the certificate of the Director, Central Food Laboratory, thereupon, superseded the Public Analyst's report. The Public Analyst's report if not superseded by the Certificate of the Director, Central Food Laboratory and the Certificate of the Director, Central Food Laboratory might be used as evidence of the facts stated therein in any proceeding under the Act with this difference that the certificate of the Director, Central Food Laboratory was to be final and conclusive evidence of the facts stated therein.

7. In the present case the certificate of the Director showed that the sample of gingelly oil contained 6·2% of Free Fatty Acid whereas the permissible limit was 3 per cent. only. We are not concerned with the Public Analyst's report since that has been superseded by the certificate of the Director, Central Food Laboratory, and the latter certificate has been made conclusive evidence of the facts mentioned in it. The sample it must therefore be found, was adulterated.

8. The sample, as we mentioned earlier, was taken on 1st November, 1969, the analysis by the Public Analyst was on 11th November, 1969, and the analysis by the Director, Central Food Laboratory, was on 6th February, 1970. The learned District Magistrate and the High Court thought that although the Free Fatty Acid content in that part of the sample which was sent to the Director, Central Food Laboratory was 6.2% on the date when the Director analysed the oil, it could not be said to have been established that on the date when the sample was taken by the Food Inspector the Free Fatty Acid content exceeded 3%. According to them it could well be that the Free Fatty Acid content increased due to natural causes. We are unable to agree with the lower Courts. There is nothing in the evidence, nor has anything been shown to us from any scientific work which would suggest that the Free Fatty Acid content would so rapidly increase in the space of about three months that what was less than 3% on 1st November, 1969, when the sample was taken increased to 6.2 per cent. by 6th February, 1970, when the sample was analysed by the Central Food Laboratory. On the other hand in the New Encyclopaedia Britannica, Volume 13 (pages 526-527) it is said:

"Fats can be heated to between 200° and 250°C without undergoing significant changes provided contact with air or oxygen is avoided.........On exposure to air, oils and fats gradually undergo certain changes. The drying oils absorb oxygen (dry) and potymetive readily; thin layers from a skin or protective film. The semidrying oils absorb oxygen more slowly and are less useful is paint oils. Still, sufficient oxygen is absorbed in time to produce distinct thickening and some film formation. Oxidation of the drying and semidrying oils is accelerated by spreading the oil over a large surface. On greasy cloths, for example, oxygen absorption may proceed so rapidly that spontaneous combustion ensues. The non-drying oils, of which olive oil is typical, do not oxidize readily on exposure to air, although changes to take place gradually, including slow hydrolysis (Splitting to fatty acids and glycerol) and subsequent oxidation. This slow oxidation causes a disagreeable smell and taste described by the term rancidity.

The chemical reactions involved in oil oxidation have been studied widely. When oils and fats are exposed to air, little change takes place for a period of time that varies from oil to oil depending upon the amount and type of unsaturation and the content of natural antioxidants. During this so-called induction period, there is virtually no change in either odour or chemistry of the oil because of the protective effect of natural antioxidants, especially tocopherol. Gradually, the effectiveness of the antioxidant is overcome and there is an accelerating rate of oxidation of unsaturated acids, called antioxidation. Chemically, the first identifiable oxidation products are hydroperoxides. These break down into a large variety of low-molecular-weight aldehydes, esters, alcohols, ketones, acids, and hydrocarbons, some of which possess the pungent, disagreeable, odorus characteristic of rancid fats. In soyabean oil exposed to air to the point of incipient rancidity, more than 100 different oxidation products have been identified. Natural oils such as coconut oil, with very low

levels of unsaturation, are very stable to flavour deterioration, but the more highly unsaturated oils such as soyabean oil or safflower oil lose their flavour more quickly. Sesame oil is unique in its flavour stability because of the presence of several natural antioxidants (sesamin, sesamolin, sesamol). Synthetic antioxidants such as propyl gallate, butylated hydroxyanisole (B.H.A.) and butylated hydroxytoluence (B.H.T.) have been used to retard the onset of rancidity and increase the storage life of edible fats".

Gingelly (Til or sesame) oil we may mention is a semi drying oil. From the extract from the Encyclopaedia Britannica it is only after prolonged exposure to air and light there may be some discernible chemical changes in gingelly (til or sesame) oil. In fact it is mentioned in the Encyclopaedia Britannica that sesame oil is unique in its flavour stability because of the presence of several natural antioxidants. There is nothing to indicate that the samples were not packed as required by the rules. The report of the Public Analyst mentions: The sample has been received properly sealed, to be air and moisture tight and packed in thick paper to be proof against access to light. Under these conditions the Free Fatty Acid content of oils remains unchanged for several months". The certificate of the Director, Central Food Laboratory mentions "The seals were intact". We are, therefore, clearly of opinion that there was no justification for the conclusion of the District Magistrate and the High Court that the Free Fatty Acid content of the oil on the date when the sample was taken might have been less than 3% and therefore, not adulterated. We set aside the judgments of the District Magistrate and the High Court and convict the second respondent under section 16 (1) (*a*) (*i*) read with section 7 (*i*) and 2 (i) (1) of the Prevention of Food Adulteration Act and sentence him to pay a fine of Rs. 100 in default to undergo simple imprisonment for a period of two weeks. We are imposing a nominal sentence having regard to the circumstance that we are interfering with a concurrent order of acquittal more ten years after the commission of the offence.

V.K. —— *Appeal allowed.*

THE SUPREME COURT OF INDIA.

(Criminal Appellate Jurisdiction.)

PRESENT:—*O. Chinnappa Reddy and Baharul Islam, JJ.*

Sevi and another; Koodakkal Karian and others .. *Appellants**

v.

State of Tamil Nadu and another .. *Respondents.*

(A) *Criminal trial — Murder case—Testimony of partisan witnesses — Evidentiary value of.*

Where the entire evidence is of a partisan character impartial investigation can lend assurance to the Court to enable it to accept such partisan evidence. But where the investigation itself is found to be tainted the task of the Court to sift the evidence becomes very difficult indeed. [*Para.* 3.]

(B) *Criminal trial— Murder case — Several victims attacked simultaneously — Witnesses giving photographic and dramatic account with minute details of the attack on each of the victims—Credibility.*

Another feature of the case which makes the Court doubt the credibility of the witnesses is the photographic and somewhat dramatic account they gave of the incident with minute details of the attack on each of the victims. According to the account of the witnesses it was as if each of the victims of the attack came upon the stage one after the other to be attacked by different accused in succession, each victim and his assailant being followed by the next victim and the next assailant. Surely the account of the witnesses is too dramatic and sounds obviously invented to allow each witness to give evidence of the entire attack. But it was admitted that the victims were all attacked simultaneously. If so, it was impossible for each of them to have noticed the attack on everyone else. [*Para.* 3.]

* Crl. As. Nos. 15 and 147 of 1976. *3rd March*, 1981.

The Judgment of the Court was delivered by

Chinnappa Reddy, J.—Criminal Appeal No. 15 of 1976, is under the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970, and Criminal Appeal No. 147 of 1976, is an appeal by Special Leave. The five appellants in the two appeals and three others were tried by the learned Additional Sessions Judge of Salem and acquitted of offences under sections 148, 302 read with section 34 and other cognate offences. On an appeal by the State of Tamil Nadu the High Court of Madras confirmed the acquittal of accused 3, 5 and 7 and convicted the present appellants (accused 1, 2, 4, 6 and 8) under section 148, Indian Penal Code. The High Court also convicted A-1 and A-2 (appellants in Criminal Appeal No. 15 of 1976) under section 302 read with section 34 and accused A-4, A-6 and A-8 (appellants in Criminal Appeal No. 147 of 1976) under section 307, Indian Penal Code. The case of the prosecution briefly was that there was enmity between the Vanniars and Naickers of Kottaiyur village in regard to the management of Mariamman temple. The accused, all of whom are closely inter-related, belong to the Naicker group while most of the prosecution witnesses belong to the group of the Vanniars. On 4th September, 1972, at about 6 P.M. P.W. 1 was returning home from his field while P.W. 2 was going to his field and coming in the opposite direction. Accused 4 and 5 were going ahead of P.W. 1 at a distance of about 30 ft. They were indulging in abuse of the villagers. P.W. 2 questioned A-4, why he was indulging in such abuse whereupon A-4 picked up stone and hit P.W. 2 on the left side of the head. P.W. 2 fell down shouting "Ayyo, Appa, I am dying". The two accused then ran away. P.W. 1, chased A-4, who ran to the house of his father-in-law and hid himself inside the house. P.W. 1 then proceeded to the house of P.W. 2, who had been injured by the stone thrown by A-4. When he was at the house of P.W. 2 the deceased Alagappan and P.Ws. 3, 4 and 5 came there. The deceased asked all of them to go with him to question A-4, why he had beaten P.W. 2 with a stone. When they had reached the manure pit situated on the way, the eight accused came there. A-5 caught hold of P.W. 3 and A-6 stabbed him on the right side of the back. The deceased said 'what is this injustice'. A-3 caught him and A-2 stabbed the deceased on the left flank. A-1 also stabbed him once on the left side and again on the right side. A-7 caught P.W. 4 and A-4 stabbed him on the left shoulder. A-4 stabbed again 4 or 5 times. A-6 caught P.W. 5 and A-8 stabbed him on the right flank. Thereafter all the eight accused ran away. P.W. 1 ran from the scene of occurrence towards his house. He met P.W. 9 on the way, told him about the occurrence and asked him to go to Kaveri Palayam, a village, three miles from Kottaiyur, and telephone to the police. P.W. 9 accordingly went to Kaveri Palayam and asked P.W. 10 to telephone to the police that some persons of his village had been stabbed by other persons of the village. P.W. 10 accordingly telephoned to the Police Station at Kolathur. The Sub-Inspector of Police P.W. 15 on receipt of the telephone message proceeded to Kolathur village, taking with him for First Information Report Book, hospital Memo. book etc. At Kolathur he found P.Ws. 2 to 5 in an injured condition and the deceased dead. He arranged to send P.Ws. 2 to 5 in a lorry to Mettur Hospital and between 9-30 P.M. and 10 P.M. he recorded the complaint of P.W. 1 which he registered as the First Information Report. The Inspector of Police P.W. 16 arrived in the village at 2-30 A.M. and took over the investigation. After completing the investigation a charge-sheet was laid against eight accused.

2. The learned Additional Sessions Judge noticed certain disquieting features in the case put forward by the prosecution and acquitted the accused. The High Court, on appeal by the State convicted five out of the eight accused in the manner aforesaid.

3. One of the disturbing features of the case is the strange conduct of P.W. 15 the Sub-Inspector of Police. According to him he was told by P.W. 10 on the telephone that there was some rioting at Kottaiyur and that some persons were stabbed. He made an entry in the general diary and proceeded to Kottaiyur taking with him the First Information Report Book, the hospital Memo. book, etc.. This was indeed very extraordinary conduct on the part of the Sub-Inspector of Police. If he was not satisfied with the

information given by P.W. 10, that any cognizable offence had been committed he was quite right in making an entry in the general diary and proceeding to the village to verify the information without registering any First Information Report. But, we have yet not come across any case where an Officer-in-charge of a Police Station has carried with him the First Information Report Book. The First Information Report Book is supposed to be at the Police Station House all the time. If the Sub-Inspector is not satisfied on the information received by him that a cognizable offence has been committed and wants to verify the information, his duty is to make an entry in the general diary, proceed to the village and take a complaint at the village from someone who is in a position to give a report about the commission of a cognizable offence. Thereafter, the ordinary procedure is to send the report to the Police Station to be registered at the Police Station by the Officer-in-charge of the Police Station. But, indeed, we have never come across a case where the Station House Officer has taken the First Information Report Book with him to the scene of occurrence. According to the suggestion of defence the original First Information Report which was registered was something altogether different from what has now been put forward as the First Information Report and that the present report is one which has been substituted in the place of another which was destroyed. To substantiate their suggestion the defence requested the Sessions Judge to direct the Sub-Inspector to produce the First Information Report Book in the Court so that the counterfoils might be examined. The Sub-Inspector was unable to produce the relevant First Information Report Book in Court notwithstanding the directions of the Court. The First Information Report Book, if produced, would have contained the necessary counterfoils corresponding to the First Information Report produced in Court. The Sub-Inspector when questioned stated that he searched for the counterfoil book but was unable to find it, an explanation which we find impossible to accept. We cannot imagine how any First Information Report Book can disappear from a Police Station. Though he claimed that relevant entries had been made in the general diary at the Station the Sub-Inspector did not also produce the general diary in Court. The production of the general diary would have certainly dispelled suspicion. In the circumstances we think that there is great force in the submission of the learned Counsel for the accused that the original First Information Report has been suppressed and in its place some other document has been substituted. If that is so, the entire prosecution case becomes suspect. All the eye-witnesses are partisan witnesses and notwithstanding the fact that four of them were injured we are unable to accept their evidence in the peculiar circumstances of the case. Where the entire evidence is of a partisan character impartial investigation can lend assurance to the Court to enable it to accept such partisan evidence. But where the investigation itself is found to be tainted the task of the Court to sift the evidence becomes very difficult indeed. Another feature of the case which makes us doubt the credibility of the witnesses is the photographic and somewhat dramatic account which they gave of the incident with minute details of the attack on each of the victims. According to the account of the witnesses it was as if each of the victims of the attack came upon the stage one after the other to be attacked by different accused in succession, each victim and his assailant being followed by the next victim and the next assailant. Surely the account of the witnesses is too dramatic and sounds obviously invented to allow each witness to give evidence of the entire attack. But the witnesses themselves admit in cross-examination that they were all attacked simultane-

ously. If so, it was impossible for each of them to have noticed the attack on everyone else. One other important feature of the case which remains unexplained by the prosecution witnesses is the injuries found on A-4. According to A-4 the prosecution party came to his house and attacked him and the prosecution party were injured in that incident, suggesting thereby that he acted in exercise of his right of private defence. He, however, excludes the presence of the other accused. Whether his version is true or not, the fact remains that he did sustain some injuries which have remained unexplained. Having regard to all these special features of this case we do not think that the High Court was justified in setting aside the acquittal of the appellants and convicting them. The appeals are, therefore, allowed. The appellants, if not on bail, will be released forthwith. If they are on bail their bail bonds will stand cancelled.

V.K. —— *Appeals allowed.*

THE SUPREME COURT OF INDIA.

(Civil Appellate Jurisdiction.)

PRESENT:—*O. Chinnappa Reddy, A. P. Sen and Baharul Islam, JJ.*

Rajammal and another .. *Appellants**

v.

Mookan *alias* Peria Perumal Theval and others .. *Respondents.*

Madras Bhoodan Yagna Act (XV of 1958), *sections* 11, 16, 17 *and* 20—*Donation of land for Bhoodan Yagna prior to commencement of Act—Applicability of Act — If exempted from relevant provisions of Transfer of Property Act (IV of* 1882) *and Registration Act (XVI of* 1908).

The provisions of the Madras Bhoodan Yagna Act, had retrospective effect and were intended to include donations of land by any person to the Bhoodan Yagna made before the commencement of the Act, and such donations were also exempted from the relevant provisions of the Transfer of Property Act and the Registration Act, with retrospective effect.

[*Para.* 9.]

*C.A. No. 1932 of 1970.

6th August, 1981.

The law ingrained in section 11 of the Madras Bhoodan Yagna (Amendment) Act (XXXVI of 1964), is merely declaratory in express terms of the already existing law under the Bhoodan Yagna Act of 1958. [*Para.* 13.]

The Judgment of the Court was delivered by

Baharul Islam, J.—This appeal by special leave is by the plaintiffs. The material facts of the case are that the suit land belonged to one Venkataramabhadra Naidu, a Zamindar (hereinafter 'Naidu'), who donated it to Bhoodan Yagna on 18th August, 1953, by executing documents, Exhibits B-1 and B-2, which were unregistered deeds. Later in 1958, the Madras Bhoodan Yagna Act, 1958 (hereinafter 'The Bhoodan Act') came into force. The Madras Bhoodan Yagna Board constituted under section 3 of the Bhoodan Act and functioning under the Act allotted the suit land to the defendants who claimed to have been in possession of the land since before the donation. On 3rd August, 1960, Naidu sold the suit land to the plaintiffs by a registered sale deed for a sum of Rupees 2,000. The plaintiffs alleged that they were in possession of the suit land but as the defendants were interfering in their possession, they filed the suit for declaration of their title to, and possession of the suit land. The plaintiffs' case was that as the donation of the land by Naidu was not by any registered deed, no title passed to the Bhoodan Board and subsequently to its allottees, namely, the defendants and that Naidu validily transferred title to them.

2. The defendants' case, *inter alia,* was that the land vested in the Bhoodan Board under the provisions of the Bhoodan Act, and Naidu had no saleable interest thereto which he could transfer to the plaintiffs by the sale deed.

3. The Trial Court decreed the plaintiffs' suit. The decree was upheld by the First Appellate Court on appeal by the defendants. Both the Courts held that the donation of the suit land by Naidu was not in conformity with section 17 of the Registration Act and section 12 of the Transfer of Property Act and as such title to the suit land did not pass from Naidu to the Bhoodan Board. The defendants preferred a second appeal before the High Court. The High Court reversed the decree of the Courts below and dismissed the plaintiffs' suit.

4. It has to be mentioned that the First Appellate Court passed its decree on 1st October, 1962, while the High Court passed its impugned decree on 31st December, 1969; while in the meantime in 1964, the Madras Bhoodan Yagna Act of 1958 was amended by the Madras Bhoodan Yagna (Amendment) Act, 1964 (hereinafter 'the Bhoodan (Amendment) Act').

5. Learned counsel for the appellants submits that the donation of the suit land by Naidu to the Bhoodan Board was before the passing of the Bhoodan Act of 1958 and the Bhoodan (Amendment) Act of 1964; as such the provisions of these two Acts could not save the donation of the suit land by Naidu to Bhoodan Board from the operation of the relevant provisions of the Transfer of Property Act and the Indian Registration Act. In other words, the submission is that the donation was invalid for want of a registered deed.

6. It may be mentioned that counsel of the appellants has not challenged the validity or vires of the provisions of the Bhoodan Act or Bhoodan (Amendment) Act. His submission is that the above provisions do not have retrospective effect.

7. The object of the Bhoodan Act is as it appears from the preamble, "to facilitate the donation of lands for the Bhoodan Yagna initiated by Shri Acharya Vinoba Bhave and the transfer and settlement of such lands for the benefit of landless poor persons or for community purposes and to provide in Gramdan Villages for the vesting of lands in, and the management of those lands by, the Sarvodaya Panchayat in the State of Madras."

'Bhoodan Yagna' has been defined under clause (*a*) of section 2 as meaning 'the movement initiated by Shri Acharya Vinobha Bhave for the acquisition of lands through voluntary gifts for distribution to landless poor persons, co-operative societies or Sarvodaya Panchayats or for community purposes." It is why, therefore, it appears, the donations of land to Bhoodan Yagna were exempted from the operation of the Indian Registration Act and the Transfer of Property Act, as it will presently appear.

8. I shall first refer to the relevant provisions of the original Bhoodan Act (of 1958) and examine the position of the law that was before the amendment of 1964. Section 3 of the Bhoodan Act, provided for the establishment and incorporation of a Board—to be called. 'The Madras State Bhoodan Yagna Board' (hereinafter the 'Bhoodan Board'). Section 11 of the Bhoodan Act provided "All lands donated for the purposes of the Bhoodan Yagna whether *before* (Italics added or after the commencement of this Act shall, subject to the provisions of sections 16, 17 and 20, vest in the State Board".

Section 11 clearly shows that the intention of the Legislature was to bring into the purview of the Bhoodan Act lands donated by any person *before* the commencement of the Bhoodan Act.

Clause (*a*) of sub-section (1) of section 16 which is material is in the following terms:—

> "16 (1).—Notwithstanding anything to the contrary contained in any other law for the time being in force.
>
> (*a*) any owner may, by declaration made in the prescribed manner, donate his land for the Bhoodan Yagna.
>
> Provided that ....
>
> Provided further that ....".

Sub-section (3) to section 16 reads:

> "Every declaration made under sub-section (1) shall be filed with the Tahsildar or the Deputy Tahsildar in independent charge having jurisdiction in the taluk or sub-taluk where the land is situate".

Sub-section (1) of section 17 provided:

> "Every declaration filed under sub-section (3) of section 16 shall, as soon as may be, be published in the Fort St. George Gazette and in such other manner as may be prescribed."

Any person whose interest were affected by the declaration of the donation might file objections before the Tahsildar or Deputy Tahsildar under sub-section (2). Under sub-section (3), the Tahsildar or the Deputy Tahsildar had to register every such objection, fix a date of hearing and give notice of the date of hearing to the donor, and the objector, the Bhoodan Board and the Local Committee concerned, and then under sub-section (4), had to investigate and dispose of the objection, and

by an order confirm the declaration or declare it null and void. Sub-sections (5) and (6) which are important were in the following terms:—

"*Sub-section* (5).—If the Tahsildar or the Deputy Tahsildar confirms the declaration, then, *notwithstanding anything contained in any other law for the time being in force, all the right, title and interest of the donor in such land shall stand transferred to* and *vest in the State Board* for the purposes of the Bhoodana Yagna. (Italics ours.)

Sub-section (6).—Every order under sub-section (5) confirming a declaration shall be published in the Fort St. George Gazette and on such publication, the donation of land shall, subject to the provisions of section 23, be irrevocable."

Sub-section (5) in clear terms lays down that on the confirmation of the declaration of the donation, notwithstanding the provisions of 'any other law' (to wit the Transfer of Property Act and the Indian Registration Act in this case) right, title and interest in the land "shall stand transferred to and vest in" the Bhoodan Board. And after publication of the order of confirmation of the donation, it can be challenged only by a suit contemplated by section 23.

Sub-section (1) of section 20 provided that "The State Board shall prepare a list of all lands donated for purposes of Bhoodan Yagna *prior to* (Italics added) the commencement of this Act" showing the area, description and other particulars of the land, the name and address of the donor and allied matters. Sub-section (1) to section 20 also shows that the Bhoodan Act was intended in include the donations made *prior to* the commencement of this Act. Sub-section (2) provides for publication of the list prepared under sub-section (1) in the Fort St. George Gazette.

The proviso added after sub-section (3) of section 20, and sub-section (4) of section 20 are important and need be extracted. They are as follows:—

"Sub-section (3) ....:

Provided that where an order is made by the Inquiry Officer under sub-section (4) of section 17 confirming the donation, such donation shall be deemed to have been accepted with effect from the date on which the donation was made and for this purpose, this Act shall be deemed to have been in force on such date.

Sub-section (4).—Where such land has been granted to any person it shall, with effect from the date of grant, be deemed further to have been granted to the grantee under and in accordance with the provisions of section 19".

These two are deeming provisions and are a complete answer to the appellants' contention. The meaning of the proviso is that although the Bhoodan Act was not in existence at the time a donation was made its acceptance by the Tahsildar or Deputy Tahsildar later on after the commencement of the Act, (as in the case in hand), by virtue of the deeming provision, the Act shall be deemed to be in existence on the date of the donation. Sub-section (4) has made a similar deeming provision for the grant made in favour of a grantee before the coming into force of the Bhoodan Act.

Section 24 reads:

"Notwithstanding anything contained in any other law, every declaration and every grant of land made or deemed to have made under this Act shall be and *be deemed always to have been exempt from the payment of stamp duty* and of encumbrance certificate fee, *registration fee or* of the fee payable for the attestation of a power of attorney under section 33, *sub-section* (2), *of the Indian Registration Act*, 1908 (Central Act XVI of 1908)." (Italics added.)

The provision of this section also shows that donations and grants under the Bhoodan Act were exempted from the provisions of the Transfer of Property Act and Indian Registration Act with retrospective effect.

9. The above considerations leave no doubt at all that the provisions of the Bhoodan Act, had restrospective effect and intended to include donations of land by any person to the Bhoodan Yagna made before the commencement of the Bhoodan Act, and such donations were also exempted from the relevant provisions of the Transfer of Property Act, and the Indian Registration Act with retrospective effect.

10. Section 23 made the order of the Tahsildar or Deputy Tahsildar under sub-section (4) of section 17, final and not subject to appeal or revision. An aggrieved party however was not without remedy. Under the proviso of section 23, any person whose interest was affected as a result of the donation to the Bhoodan Yagna, whether before or after the commencement of the Act, might file a suit to set aside the order of the Tahsildar or the Deputy Tahsildar. The plaintiffs in this present suit (appellants before us) filed no such suit.

11. Let us now turn to the relevant provisions of the Bhoodan (Amendment) Act of 1964. There was no material amendment to section 16 of the original Act. Only "The State Board" was substituted for. "Tahsildar or Deputy Tahsildar". There was also no material amendment to section 17. "Tahsildar or Deputy Tahsildar" was replaced by 'Inquiry Officer'.

Only with the substitution of 'Inquiry Officer' for 'Tahsildar or Deputy Tahsildar', section 20 and section 23 have been retained. Section 24 as amended is as follows:—

> "Notwithstanding anything contained in any other law, every declaration and every grant of land made or deemed to have been made under this Act shall be and be deemed always to have been exempt from registration and payment of stamp duty and of encumbrance certificate fee".

A comparison of the new section 24 with the old section 24 shows that there has been no change in the law so far as registration and stamp duty were concerned.

12. Section 11 of the Bhoodan (Amendment) Act of 1964 is new and very important. Clauses (*b*) and (*c*) which are material for our purpose need be extracted:

> "*Section* 11.—Notwithstanding anything contained in any judgment, decree or order of any Court, no donation of any land for the Bhoodan Yagna or for Gramdan and no grant of any such land made or deemed to have been made under the principal Act as in force immediately before the commencement of this Act, shall be deemed to be invalid on the ground only that the donation or the grant of land as aforesaid was not made in accordance with any law relating to transfer of property or registration, and any such donation or grant of land shall, for all purposes, be deemed to be and to have always been validly made and accordingly—
>
> (*a*) ....
>
> (*b*) no suit or other proceeding shall be maintained or continued in any Court for the declaration of title to, or the recovery of possession of, any land donated for the Bhoodan Yagna or for Gramdan on the ground that the donation was not made in accordance with the law relating to transfer of property or registration;
>
> (*c*) no Court shall enforce any decree or order declaring any donation of land for the Bhoodan Yagna or for Gramdan to be invalid or directing the recovery of possession of any such land by the person who donated it or any other person claiming under him, on ground referred to in clause (*b*):
>
> Provided that................
>
> Provided further that................
>
> Provided also that................
>
> *Explanation*................".

Clause (*b*) of section 11 of the Bhoodan (Amendment) Act puts a bar on the maintenance of a suit or other proceedings in any Court for the declaration of title to, or recovery of possession of, any land donated for the Bhoodan Yagna on the ground that the transfer (donation) was not in accordance with the provisions of the Transfer of Property Act or Indian Registration Act. Clause (*c*) to section 11 goes one step further and lays down that even if a decree has already been passed in such a suit, no Court shall execute a decree in a suit referred to in clause (*b*).

13. It is thus seen that the law both under the old and the new Acts so far as the operation of the provisions of the Transfer of Property Act and the Registration Act is concerned, is the same. The law ingrained in section 11 is merely declaratory in express terms of the already existing law under the Bhoodan Act of 1958.

14. The second appeal that was pending before the High Court fell within the mischief of clause (*b*) of section 11. Even if there had been no appeal by the defendants, the execution of the decree passed by the

First Appellate Court could have been successfully objected to by the defendant or any other person as void on the ground that the suit itself was barred under section 23 of the old Act itself.

15. This appeal has no merit and is dismissed with costs.

V.K. —— *Appeal dismissed.*

THE SUPREME COURT OF INDIA.

PRESENT:—*P. N. Bhagwati, A. P. Sen and E. S. Venkatraiah, JJ.*

Commissioner of Income-tax, Madras .. *Petitioner*

v.

Andhra Chamber of Commerce .. *Respondent.*

and

Commissioner of Income-tax, Madras .. *Petitioner*

v.

South Indian Chamber of Commerce .. *Respondent.*

and

Commissioner of Income-tax, Madras .. *Petitioner*

v.

South India Film Chamber of Commerce .. *Respondent.*

and

Commissioner of Income-tax, Madras .. *Petitioner*

v.

Madras Stock Exchange Ltd. .. *Respondent.*

Income-tax Act, (XLIII of 1961), *sections* 2 (15), 11—*Charitable purpose —Exemption when available—Words "any other object of general public utility, not involving carrying on of any activity for profit"—Meaning of—Chamber of Commerce whether entitled to exemption.*

The objects of the Andhra Chamber of Commerce fell within the last head of charitable purpose denoted by the words "advancement of any other object of general public utility" and were, therefore, charitable within the meaning of section 2 (15) of the Income-tax Act, 1961, unless it could be shown that they involved the carrying on of any activity for profit. It was only where the predominant object and the purpose of the activity carried on was to earn profit, that the object could be said to involve the carrying on of an activity for profit but if the predominant object was to subserve the charitable purpose then the inhibition of these last 9 words would not be attracted. Profit-making was not the predominant object of the activity carried on by the Andhra Chamber of Commerce but the predominant object was to promote trade and commerce which was an object of general public uility. [*Para.* 1.]

Commissioner of Income-tax v. *Madras Stock Exchange Limited,* (1976) 105 I.T.R. 546, Affirmed.

Cases cited:—

Commissioner of Income-tax v. *Andhra Chamber of Commerce,* (1965) 55 I.T.R. 722 (S.C.): (1965) 1 M.L.J. (S.C.) 133: (1965) 1 An.W.R. (S.C.) 133: (1965) 1 S.C.J. 725: (1965) 1 I.T.J. 667: A.I.R. 1965 S.C. 1281;

Additional Commissioner of Income-tax v. *Surat Art Silk Cloth Manufacturers Association,* (1980) 121 I.T.R. 1 (S. C.): 1980 Tax.L.R. 230: (1980) 2 S.C.C. 31: (1980) 1 I.T.J. 130: (1980) 1 S.C.J. 204: A.I.R. 1980 S.C. 387.

V. S. Desai, Senior Advocate (*S. P. Nayyar* and *Miss A. Subhashini,* Advocates, with him), for Appellant in C.A. No. 222 of 1980 and Petitioner in the special leave petitions.

E. C. Agarwala and *M. M. L. Srivastava,* Advocates, for Respondent in C.A. No. 222 of 1980 (Andhra Chamber of Commerce) and Respondent in S.L.P. (Civil) Nos. 4166 to 4171 of 1979 (South India Film Chamber of Commerce).

J. Ramamurthi and *Miss R. Vaigai,* Advocates, for Respondent in S. L. P. (Civil) No. 4165 of 1979 (South Indian Chamber of Commerce).

*C.A. No. 222 of 1980 with S.L.P. (Civil) Nos. 4165 to 4175 and 3779 of 1979.

2nd May, 1980.

T. A. Ramachandran and *Mrs. J. Ramachandran,* Advocates, for Respondent in S.L.P. (Civil) Nos. 4172 to 4175 and 3779 of 1979 (Madras Stock Exchange).

The Court delivered the following

JUDGMENT.—This appeal by special leave is covered by the judgment of this Court in *Commissioner of Income-tax* v. *Andhra Chamber of Commerce*[1] and in *Additional Commissioner of Income-tax* v. *Surat Art Silk Cloth Manufacturers Association*[2]. It is clear from the judgment in *Commissioner of Income-tax* v. *Andhra Chamber of Commerce*[1], that the objects of the Andhra Chamber of Commerce fell within the last head of charitable purpose denoted by the words "advancement of any other object of general public utility" and were, therefore, charitable within the meaning of section 2 (15) of the Income-tax Act, 1961, unless it could be shown that they involved the carrying on of any activity for profit. The words "not involving the carrying on of any activity for profit" came up for consideration before this Court in *Additional Commissioner of Income-tax* v. *Surat Art Silk Cloth Manufacturers Association*[2], and there it was held by the majority of the judges that it was only where the predominant object and the purpose of the activity carried on was to earn profit, that the object could be said to involve the carrying on of an activity for profit but if the predominant object was to subserve the charitable purpose then the inhibition of these last 9 words would not be attracted. It is clear from the facts set out in the judgment of the High Court that profit-making was not the predominant object of the activity carried on by the Andhra Chamber of Commerce but the predominant object was to promote trade and commerce which was an object of general public utility. The High Court was, therefore, right in taking the view that the objects of the Andhra Chamber of Commerce fell within the last category of charitable purpose given in section 2 (15) of the Act and its income was exempt from tax under section 11 (1) of the Act.

The appeal is accordingly dismissed with no order as to costs.

S.L.P. (Civil) No. 4165 of 1979, S.L.P. (Civil) Nos. 4166-71 of 1979, S. L. P. (Civil) Nos. 4172-75 of 1979 and S.L.P. (Civil) No. 3779 of 1979 are also dismissed.

R.S. ——— *Appeal and petitions dismissed.*

1. (1965) 55 I.T.R. 722: (1965) 1 M.L.J. (S. C.) 133: (1965) 1 An.W.R. (S.C.) 133: (1965) 1 S.C.J. 725: (1965) 1 I.T.J. 667: A.I.R. 1965 S.C. 1281.

2. (1980) 121 I.T.R. 1: 1980 Tax.L.R. 230: (1980) 2 S.C.C. 31: (1980) 1 I.T.J. 130: (1980) 1 S. C. J. 204: A.I.R. 1980 S.C. 387.

THE SUPREME COURT OF INDIA.

(Civil Appellate Jurisdiction.)

PRESENT:—*D. A. Desai, A. D. Koshal and A. P. Sen, JJ.*

State of Tamil Nadu .. *Petitioner**

v.

Padmavathiammal .. *Respondent.*

Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act (LVIII of 1961), section 50 and Schedule III—Land taken over as surplus — Quantum of compensation—Determination—Proper method.

The Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961, provides for determining the compensation payable to the original owner of the land for taking over his land declared surplus. It is common ground that the compensation has to be determined according to the formula prescribed in Schedule III. The High Court in the present case has proceeded to determine the market value of the land as if it was a case under Land Acquisition Act. This is impermissible and contrary to statute. [*Paras.* 2, 5.]

The Judgment of the Court was delivered by

Desai, J.—The question before the Court was what compensation was payable to the landowner whose surplus land was taken over under the relevant ceiling law.

2. The Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961, provides for determining the compensation payable to the original owner of the land for taking over his land declared surplus. Section 50 in Chapter VI having fascicular 'compensation', provides that every person whose right, title or interest in any land is acquired by the Government under Chapter II shall be paid compensation according to the rate specified in Schedule III. It is common ground that the compensation has to be determined according to the formula prescribed in Schedule III.

3. Broadly stated, the authority charged with a duty to determine compensation has to take the first step to ascertain a sum equivalent to the net annual income from the land. This annual income determined less land revenue shall be treated as an amount of fair rent.

4. Paragraph 4 provides for a multiple of the fair rent to be paid as compensation in respect of different classes of land. We need not elaborate this point.

5. Having gone through the judgment of the High Court, this formula is conspicuous by silence. It is impossible to gather from the judgment of the High Court whether the High Court determined compensation according to the formula statutorily prescribed. On the contrary, the High Court has proceeded to determine the market value of the land as if it was a case under Land Acquisition Act. This is impermissible and contrary to statute.

6. In the judgment there is a reference to some earlier judgment of our learned colleague Shri Varadarajan. That judgment is not before us but we were told that compensation was determined on the basis of market value in that judgment. Clearly this is impermissible because it overlooked the entire scheme statutorily prescribed for determining compensation. Accordingly, we allow this appeal and set aside the judgment of the High Court and remand the matter to the High Court with a direction that the compensation be determined according to statutory formula. In case the High Court considers proper to remand the matter to the lower authority, it will be open to it to do so. Parties will be at liberty to adduce evidence bearing on the question of compensation.

7. In the circumstances there will be no order as to costs.

V.K. —— *Appeal allowed.*

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* C.A. No. 136 of 1981.

12th January, 1981.

THE SUPREME COURT OF INDIA.

(Civil Appellate Jurisdiction.)

PRESENT:—*D. A. Desai, A. D. Koshal and R. B. Misra, JJ.*

Chinnamarkathian *alias* Muthu Gounder and another; Chinna Gounder and another and Raja Gounder and another

.. *Appellants**

v.

Ayyavoo *alias* Periana Gounder and others

.. *Respondents.*

(A) *Tamil Nadu Cultivating Tenants Protection Act (XXV of* 1955), *section* 3 (4) (a) *and* (b)—*Cultivating tenant committing default in payment of rent—Application for eviction by landlord — Revenue Divisional Officer granting time under section* 3 (4) (b) *to tenant for payment of arrears and simultaneously passing a conditional order for eviction on default—Validity of such composite order.*

Per *Koshal, J.*:—When the Revenue Divisional Officer allows time to a cultivating tenant for depositing the arrears of rent in pursuance of the provisions of clause (*b*) of sub-section (4) of section 3 of the Act, he cannot simultaneously pass a conditional order of eviction which is to take effect on a default to occur *in futuro*. An order of that type can, in terms of the section, only be passed if the cultivating tenant fails to deposit the sum as directed. [*Para.* 21.]

Per *Desai, J.* (*agreeing*):—Where a period is fixed or granted by the Court for doing any act prescribed or allowed the Court may in its discretion from time to time enlarge such period even though the period originally fixed or granted may expire. If a Court in exercise of the jurisdiction can grant time to do a thing in the absence of a specific provision to the contrary, curtailing, denying or withholding such jurisdiction, the jurisdiction to grant time would inhere in its ambit the jurisdiction to extend time initially fixed by it. Passing a composite order would be acting in disregard of the jurisdiction in that while granting time simultaneously the Court denies to itself the jurisdiction to extend time. The principle of equity is that when some circumstances are to be taken into account for fixing a length of time within which a certain action is to be taken, the Court retains to itself the jurisdiction to re-examine the alteration or modification of circumstances which may necessitate extension of time. If the Court by its own act denies itself the jurisdiction to do so, it would be denying to itself the jurisdiction which in the absence of a negative provision, it undoubtedly enjoys. [*Para.* 15.]

(B) *Tamil Nadu Cultivating Tenants Protection Act (XXV of* 1955), *section* 3 (4) (a) *and* (b)—*Tenant in arrears of rent — Petition for eviction by landlord — Revenue Divisional Officer if bound under section* 3 (4) (b) *to grant time to tenant to deposit arrears.*

Per Majority: (*Desai, J., contra*):—If the ground of eviction is non-payment of rent, the Revenue Divisional Officer is clothed with power under section 3 (4) (*b*) of the Tamil Nadu Cultivating Tenants Protection Act, to allow the cultivating tenant to deposit the arrears and costs as directed. The power is discretionary and while exercising the same, it is not incumbent on the Revenue Divisional Officer to grant time. If the legislature intended to make it obligatory on the part of Revenue Divisional Officer to fix a time for deposit of arrears in all cases, there is no reason why it should have used the word 'may' in relation to the grant of time. There is no reason why the word 'may' occurring in section 3 (4) (*b*) be not given its ordinary meaning as denoting the conferment of a discretion on the Revenue Divisional Officer and be equated with "shall" so as to make it obligatory on him to grant time to the cultivating tenant. [*Paras.* 25, 26.]

(C) *Interpretation of Statutes — Beneficent legislation—Proper construction.*

Per *Desai, J.*—It is a well-settled canon of construction that in construing the provisions of a beneficent legislation the Court should adopt that construction which advances, fulfils and furthers the object of the Act rather than the one which would defeat the same and render the protection illusory. [*Para.* 6.]

*. As. Nos. 2197-2199 of 1969.

10*th December,* 1981.

Cases referred to:—

Venkitaswami v. *Ramaswami Naicker,* (1964) 77 L.W. 553; *Mahant Ram Das* v. *Ganga Das,* (1962) 1 S.C.J. 427: (1962) 1 An. W.R. (S.C.) 167: (1962) 1 M.L.J. (S.C.) 167: (1961) 3 S.C.R. 763: A. I. R. 1961 S.C. 882.

The Court delivered the following Judgments:

Desai, J.—Respondents in each of these appeals are the landlords of the land more particularly described in the three different petitions filed by them in the Court of the Revenue Divisional Officer, Namakkal in Tamil Nadu State seeking to evict tenants of different parcels of land on the allegation that the concerned tenants were in arrears of rent for the years 1958-59, 1959-60 and 1960-61. The tenants who are appellants in these three appeals appeared in the respective petitions and contested the same on diverse grounds but the only one now surviving at this stage is; whether in view of the language employed in sections 3, 4 (*a*) and (*b*) of the Madras (now Tamil Nadu) Cultivating Tenants Protection Act, 1955 ('Act' for short), the Revenue Divisional Officer erred in passing a composite order for payment of rent found to be in arrears within the time prescribed by him and on default, without any further proceeding, directing eviction of the tenants.

2. The respondents purchased the land cultivated by the tenants in each of the petitions under sale deeds Exhibit P-6, dated 22nd January, 1960 and Exhibit P-7, dated 9th March, 1960, from the erstwhile owner of the land one Nachayammal. Subsequently by the deed of assignment Exhibit P-5, dated 5th December, 1960, Nachayammal, the vendor of the respondents assigned the rent in arrears for the period 1958-59 and 1959-60 to the respondents. By the time, action in each case was commenced, according to the respondents-landlords rent for year 1960-61 had become due and payable. The respondents accordingly filed C.T.P.A. Nos. 1, 2 and 3 of 1961 against the respective tenants on 2nd January, 1961, for eviction of the tenants on the ground that they were in arrears of rent due and payable for the years 1958-59, 1959-60 and 1960-61.

3. The Revenue Divisional Officer overruled all the contentions of the appellants-tenants in each case and held that the tenants were in arrears of rent for the aforementioned three years and that they were liable to pay the same. It was further held that since by the deed of assignment, previous landlord assigned the arrears of rent for two years 1958-59 and 1959-60 in favour of the respondents, they were not only entitled to commence the action for recovery of arrears of rent due and payable to the previous landlord but they were also entitled to evict the tenants for failure to pay rent in arrears. Having recorded these findings the Revenue Divisional Officer passed identical order in each case with variation in figures. Only one order may be extracted to focus the attention on the controversy now brought to this Court. In C. T. P. A. No. 1|61 the following final order was made:

> "In view of my findings above I hold that the respondents are in arrears of rent to the extent of Rs. 2,850 for the years 1958-59, 1959-60 and 1960-61 to the petitioners. I direct under sections 3, 4 (*a*) that this amount be paid to the petitioners within six weeks from the date of this order failing which they shall be evicted from the suit lands".

This order was made on 6th November, 1961. The tenants were, therefore, under an obligation to pay the arrears found due by 18th December, 1961, to qualify for the protection of the Act. Admittedly the tenants did not deposit the arrears found due by the Revenue Divisional Officer but filed three civil revision petitions on 11th December, 1961 in the High Court. While admitting the revision petitions on 15th December, 1961, the High Court granted conditional stay directing that the rent found in arrears be deposited within the time set out in the order of the High Court. A dispute appears to have been raised about the deposit made by the tenants whereupon the High Court on 2nd May, 1962, directed that an additional amount of Rs. 950 be deposited by the tenants within the time prescribed by it and it is conceded that the conditional orders have been fully complied with.

4. The most important contention that engaged the attention of the High Court at the hearing of the Revision Petitions was whether the Revenue Divisional Officer was in error in passing a composite order whereby he determined the amount of rent in arrears

and after specifying the time within which the amount in arrears should be paid up, prescribed the consequences of failure to act within the prescribed time, namely, that the tenants would be evicted. The High Court noticed some of its own conflicting decisions bearing on the topic but ultimately held that the view taken by Srinivasan, J., in *Venkitaswami Naicker* v. *Ramaswami Naicker*[1], in which it was held as under, was correct.

> "Having regard to the object of the enactment it is clear that the law empowers the Revenue Divisional Officer to grant a reasonable time to the tenant to pay the arrears in order to avoid eviction. There may be a variety of circumstances by reason of which the tenant might find it difficult to comply with the direction to deposit the arrears by the date fixed. If the date so fixed initially is to be an inflexible and unalterable date, it is bound to work considerable hardships upon the tenants. It would be a mechanical application of the provision of the section for the purpose of eviction. The object of the section is to avoid eviction wherever possible and not insist upon eviction for such reasons as obtain in the case".

5. Having noticed the law as indicated in the passage extracted, the High Court observed that the order made by the Revenue Divisional Officer was not one for eviction. A further unqualified order has to be passed by the Revenue Divisional Officer directing the eviction. But at a later stage in the judgment the High Court appears to have taken a somersault when it observed that in the case before it the High Court found nothing wrong in the order which the Revenue Divisional Officer had passed. In other words, the composite order was held to be legal and once the revision petitions filed by the tenants were dismissed by the High Court, the order passed by the Revenue Divisional Officer would immediately come into operation. With respect, our task became none too easy to wade through the irreconcilably contradictory approach of the High Court. Ultimately the High Court dismissed the three revision petitions. Hence these three appeals by certificate.

6. The object behind enacting the Act clearly manifests itself by reference to its long title which reads:

> "An Act for the protection from eviction of cultivating tenants in certain areas in the State of Madras".

It was a beneficent legislation for granting security of tenure to cultivating tenants of agricultural lands. It is a well-settled canon of construction that in construing the provisions of such enactments the Court should adopt that construction which advances, fulfils and furthers the object of the Act rather than the one which would defeat the same and render the protection illusory.

7. It is not in dispute that the tenants in each of these appeals are cultivating tenants and the lands of which they are tenants are lands covered by the Act. They are sought to be evicted on the only ground that they have committed default in payment of rent payable from year to year for a period of three years.

8. Mr. Natesan learned counsel who appeared for the respondents urged that if the Revenue Divisional Officer has a discretion to grant time to the defaulting tenant to repair the default, there would be nothing illegal in granting time and simultaneously providing for consequence of default. This contention may be examined from three independent angles:

(1) Has Revenue Divisional Officer a discretion to grant time after being satisfied that a default is committed, to repair the default within the time considered reasonable by him and so ordered by him?

(2) Has he a discretion to further extend the time if the defaulting tenant is unable to repair the default within the time fixed by him?

(3) What is the impact of answers of the aforementioned two questions on his jurisdiction to pass a composite order?

9. Section 3 and the relevant sub-sections read as under:

> "3 (1). Subject to the next succeeding sub-sections, no cultivating tenant shall be

1. (1964) 77 L.W. 553.

evicted from his holding or any part thereof, by or at the instance of his landlord, whether in execution of a decree or order of a Court or otherwise;

* * * * *

(4) (*a*) Every landlord seeking to evict a cultivating tenant falling under sub-section (2) shall, whether or not there is an order or decree of a Court for the eviction of such cultivating tenant, make an application to the Revenue Divisional Officer and such application shall bear a court-fee stamp of one rupee.

(4) (*b*) On receipt of such application the Revenue Divisional Officer shall, after giving a reasonable opportunity to the landlord and the cultivating tenant to make their representations, hold a summary enquiry into the matter and pass an order either allowing the application or dismissing it and in a case falling under clause (*a*) or clause (*aa*) of sub-section (2) in which the tenant had not availed of the provisions contained in sub-section (3), the Revenue Divisional Officer may allow the cultivating tenant such time as he considers just and reasonable having regard to the relative circumstances of the landlord and the cultivating tenant for depositing the arrears of rent payable under this Act inclusive of such costs as he may direct. If the cultivating tenant deposits the sum as directed, he shall be deemed to have paid the rent under sub-section (3) (*b*). If the cultivating tenant fails to deposit the sum as directed, the Revenue Divisional Officer shall pass an order for eviction".

10. Section 3 of the Act places an embargo on the eviction of a cultivating tenant and the protection extends to rendering a decree or order of a Court for eviction nugatory. There is an enabling provision in sub-section (4) (*a*) of section 3 which enables the landlord to seek eviction of a cultivating tenant on the ground which may be available to him under the Act. When such an application is made, clause (*b*) of sub-section (4) prescribes the procedure to be followed by the Revenue Divisional Officer. The officer concerned has to, (*i*) give an opportunity both to the landlord and the cultivating tenant to make a representation; (*ii*) hold a summary enquiry into the matter to determine the rent in arrears. After having determined the rent in arrears the Revenue Divisional Officer has to further enquire into the relative circumstances of the landlord and the cultivating tenant and the circumstances which have a bearing on the issues and the circumstances relatable to the need of the landlord for rent and the present paying capacity of the tenant. After taking into consideration the circumstances of both the landlord and the tenant thus ascertained the Revenue Divisional Officer has to decide what length of time has to be given to the tenant to deposit the rent found in arrears and at that stage the proceeding must stop. It is something like a preliminary issue to be determined because after a finding is recorded that the tenant is in arrears and the amount of arrears is determined, the Revenue Divisional Officer is under a statutory obligation to grant time to deposit the arrears. The section grants *locus penitentiae* to a tenant who has committed default in payment of rent. Granting of the time is not a concession dependent upon the sweet will of the Revenue Divisional Officer. Granting time to deposit the arrears is statutory obligation cast on the Revenue Divisional Officer. He has a discretion in determining the length of time and this discretion is to be exercised judicially based upon objective facts ascertained in the inquiry relatable to the circumstances of the landlord and the tenant. In the context in which the expression 'relative circumstances of the landlord and the cultivating tenant' is used clearly manifests the legislative intention that the circumstances of the landlord for recovering arrears of rent which may indicate his urgent need for the money if the rent is in the crop share, the crop, and the relative circumstance of the tenant would be his present financial position to repair the default. On both sides there can be number of circumstances one can envisage which, if properly brought to the notice of the Revenue Divisional Officer, would influence his judicial decision as to the length of time to be granted by him for the deposit of arrears. Where the landlord is a big landlord to whom payment of rent by one tenant of a small amount would not make any difference and the tenant is a needy tenant who was so involved in such depressing circumstances that he could not pay even the small amount of rent in time and when such circum-

stances are judicially apprised, the Revenue Divisional Officer may shorten or lengthen the time. The order fixing the time must show so as to repair the default. It is not open to the Revenue Divisional Officer to arbitrarily fix time. The order fixing the time must show on the face of record that he made the necessary inquiry as to the relative circumstances of the landlord and the cultivating tenant, and after evaluating the circumstances placed before him by both the sides he would determine the length of time and the order fixing the time must at least give some indication as to what weighed with him in fixing the certain time which he fixed in a given case. The proceedings before the Revenue Divisional Officer are judicial proceedings. For the purpose of the proceedings under section 3 of the Act, the Revenue Divisional Officer is a Court as provided in section 6 (*b*) of the Act and a revision petition would lie to the High Court against the order of the Revenue Divisional Officer.

11. If the proceedings are judicial and there is a *lis* between the parties, the rival contentions have to be properly adjudicated upon the evidence placed before the Court. Before the Revenue Divisional Officer can make an order for eviction of a cultivating tenant he has, as a matter of statutory obligation, to determine the issues which arise in the case under sub-section (4) (*b*) of section 3, record a finding on each of them and make a speaking order. By the very language of sub-section (4) (*b*) of section 3, the Revenue Divisional Officer has to grant time to the cultivating tenant to deposit the arrears found due by him and the length of time is to be relatable to the circumstances of the landlord and the cultivating tenant. After determining the arrears and ascertaining the circumstances of the landlord and the tenant and fixing the length of time to pay the arrears, the proceeding at that stage must stop. This is implicit in sub-section (4) (*b*) of section 3.

12. The scheme of the Act is that merely on determination of rent in arrears the Revenue Divisional Officer is not to conclude that there is such default which has become irreparable and that he is under an obligation to evict the tenant. In fact, the statute grants *locus penitentiae* to the tenant by making it obligatory upon the Revenue Divisional Officer to grant some time to the tenant to repair the default. If after the time so granted expires and the tenant fails to comply with the order calling upon him to deposit the arrears there would be a default which may become irreparable and eviction may follow. Till then there is no jurisdiction in the Revenue Divisional Officer to direct eviction.

13. In fact the High Court itself has taken this very view when it observed that the view taken by Srinivasan, J., was the correct one having regard to the avowed object of the Act, namely, preventing unreasonable eviction and affording protection to the tenants to retain the holding so long as interests of the landlord in the matter of the prompt payment of rent are safeguarded. At another stage, the High Court observed that the time that has to be given or allowed to the tenant to deposit the arrears is to be determined by considering what is just and reasonable having regard to the relative circumstances of both the parties and by its very nature this must be elastic and flexible and not fixed or final. In other words, the High Court was of the opinion that the composite order is not contemplated by sub-section (4) (*b*) of section 3.

14. If sub-section (4) (*b*) of section 3 does not contemplate passing of a composite order, what is the correct procedure that must be followed in a proceeding under that sub-section? That is self-evident from the language employed in that sub-section. After the application is received and the parties are summoned and representations are heard, the Court must determine whether the cultivating tenant is in arrears of rent. If the answer is in the affirmative, it has to determine the arrears in terms of its money value. Thereafter, the Revenue Divisional Officer must ascertain relative circumstances of the landlord and the tenant and as indicated hereinabove, these circumstances must be relatable to the need of the landlord for prompt payment and the present prevalent circumstances of the tenant relatable to the paying capacity. Thousand and one circumstances can be envisaged which may have a bearing on this aspect. After these circumstances are properly adjudicated and evaluated the Revenue Divisional Officer must fix time within which the tenant should pay the amount and repair the default.

15. It was seriously contended by Mr. Natesan as to what is there in the scheme of

the Act and especially in the language of sub-section (4) (*b*) which would make it impermissible for the Revenue Divisional Officer simultaneously passing an order determining rent in arrears and directing that if the tenant fails to pay the amount within the time prescribed by the Court eviction shall follow as a matter of course. If this construction of sub-section (4) (*b*) as canvassed by Mr. Natesan is adopted the Revenue Divisional Officer would be denying to himself a more beneficial jurisdiction conferred upon him, namely, to extend the time for making the payment if on evaluation of circumstances so placed before him he is satisfied that a further extension is not only just but not to grant it would be harsh and unjust and would be defeating the object for which the Act was enacted. An analogous provision may be noticed. It is a well accepted principle statutorily recognised in section 148 of Civil Procedure Code, that where a period is fixed or granted by the Court for doing any act prescribed or allowed by the Code, the Court may in its discretion from time to time enlarge such period even though the period originally fixed or granted may expire. If a Court in exercise of the jurisdiction can grant time to do a thing, in the absence of a specific provision to the contrary curtailing denying or withholding such jurisdiction, the jurisdiction to grant time would inhere in its ambit the jurisdiction to extend time initially fixed by it. Passing a composite order would be acting in disregard of the jurisdiction in that while granting time simultaneously the Court denies to itself the jurisdiction to extend time. The principle of equity is that when some circumstances are to be taken into account for fixing a length of time within which a certain action is to be taken, the Court retains to itself the jurisdiction to re-examine the alteration or modification of circumstances which may necessitate extension of time. If the Court by its own act denies itself the jurisdiction to do so, it would be denying to itself the jurisdiction which in the absence of a negative provision, it undoubtedly enjoys. Conditional orders, were held by this Court to be *in terrorem*, so that dilatory litigants might put themselves in order and avoid delay, but they do not completely estop a Court from taking note of events and circumstances which happen within the time fixed. In *Mahant Ram Das* v. *Ganga Das*[1], in the context of a failure to pay requisite Court-fee within the time allowed by the Court subject to the conditional order that failure to pay would result in dismissal of the appeal, this Court observed as under:

> "How undesirable it is to fix time peremptorily for a future happening which leaves the Court powerless to deal with events that might arise in between, it is not necessary to decide in this appeal. These orders turn out, often enough to be inexpedient. Such procedural orders, though peremptory (conditional decrees apart) are, in essence, *in terrorem*, so that dilatory litigants might put themselves in order and avoid delay. They do not, however, completely, estop a Court from taking note of events and circumstances which happen within the time fixed. For example, it cannot be said that, if the appellant had started with the full money ordered to be paid and came well in time but was set upon and robbed by thieves on the day previous, he could not ask for extension of time, or that the Court was powerless to extend it. Such orders are not like the law of the Medes and the Persians."

The danger inherent in passing conditional orders becomes self-evident because that by itself may result in taking away jurisdiction conferred on the Court, for just decision of the case. The true purport of conditional order is that such orders merely create something like a guarantee or sanction for obedience of the Court's order but would not take away the Court's jurisdiction to act according to the mandate of the statute or on relevant equitable considerations if the statute does not deny such consideration. In order to avoid subsequent controversy sub-section (4) (*b*) envisages proceedings in two stages and that by itself inhibits passing of a conditional order. It is' therefore, not possible to accept the construction canvassed for on behalf of the respondents.

16. As analysed, the scheme of sub-section (4) (*b*) of section 3 requires the Revenue Divisional Officer to determine arrears, ascertain the exact amount payable by the tenant,

1. (1962) 1 S.C.J. 427: (1962) 1 An. W.R. (SC.) 167: (1962) 1 M.L.J. (S.C.) 167: (1961) 3 S.C.R. 763: A. I. R. 1961 S.C. 882.

fix the time for payment after taking into consideration the relevant circumstances of the landlord and the cultivating tenant and then stop there. There is no power in the Revenue Divisional Officer at that stage to pass an order for eviction.

17. If the tenant deposits the amount or pays up the rent and repairs the default within the time fixed by the Revenue Divisional Officer, on an application of the tenant pointing out this fact, the original application of the landlord for eviction would have to be dismissed. If on the other hand the landlord points out to the Revenue Divisional Officer that the cultivating tenant has failed to comply with the order made by the Court and if after notice to the tenant and in the absence of a request for extension of time which again may be judicially examined, the default becomes wilful or contumacious. It is at that stage and at that stage alone that the Revenue Divisional Officer enjoys jurisdiction to order eviction. Such jurisdiction improperly exercised at an earlier stage would render the order without jurisdiction. Surprisingly the High Court reached the same conclusion but failed to follow it.

18. In all the three cases the Revenue Divisional Officer determined the arrears of rent and gave six weeks' time to pay the same. Within the period of six weeks the cultivating tenants in each case approached the High Court and obtained conditional stay, the condition being to deposit the rent in arrears within the time prescribed by the High Court and these orders have been complied with. If the Revenue Divisional Officer had not denied to himself the further jurisdiction to examine the situation as it emerged on the date of expiry of the period prescribed by him, it would have been brought to his notice that the eviction was unjustified in view of the orders made by the High Court. But as the order became effective according to the Revenue Divisional Officer on the mere failure to deposit the arrears found due by him, the order of eviction without jurisdiction became effective. The High Court held that there was no order of eviction but affirmed the order of the Revenue Divisional Officer as one for eviction.

19. The question then is: What should be my approach in these appeals? Frankly speaking, on my finding that the latter part of the Revenue Divisional Officer's order that 'in the event of failure to deposit the amount within the time prescribed eviction would follow', being without jurisdiction, I would be required to remand the matter to the Revenue Divisional Officer to proceed from that stage. However, I cannot overlook the fact that the initial proceedings before the Revenue Divisional Officer started in 1961. Two decades have rolled by. The ground of eviction was a technical ground of default repaired by the orders of the High Court when the rent found in arrears was deposited. The landlords have been paid, may be not specifically within the time prescribed by the Revenue Divisional Officer but within the time prescribed by the High Court. It is not necessary to decide in this case whether the time prescribed by the Revenue Divisional Officer, if challenged in the superior Court, *i.e.*, the High Court, the High Court would have jurisdiction to prescribe its own time calling upon the tenant to deposit the amount to repair the default. That question be kept open but in the facts of this case the amount having been deposited way back in 1961-62, it would be merely adding to the agony of the parties for a very technical consideration to remit the case to the Revenue Divisional Officer. In the facts of this case it would be an idle formality to remit the case to the Revenue Divisional Officer for the additional reason that he will have to fix a fresh date for deposit of the amount and the amount has already been deposited 19 to 20 years back. Having regard to all the circumstances of the case and the inevitable consequence flowing from the passage of time, I do not consider it just and proper to remit the case to the Revenue Divisional Officer. In my opinion the tenants have qualified for the protection of the Act and they were not liable to be evicted.

20. Accordingly, all the three appeals are allowed and the order for eviction of the tenants in each case is set aside but in the circumstances of the case with no order as to costs.

Koshal, J.—I have had advantage of going through the judgment prepared by my learned brother, Desai, J., and find myself in agreement with him on the following points:

(*a*) When the Revenue Divisional Officer (R.D.O. for short) allows time to a cultivating tenant for depositing the arrears of rent

in pursuance of the provisions of clause (*b*) of sub-section (4) of section 3 of the Act, he cannot simultaneously pass a conditional order of eviction which is to take effect on a default to occur *in futuro*. An order of that type can, in terms of the section, only be passed 'if the cultivating tenants fails to deposit the sum as directed'. The orders of the R.D.O. directing eviction and covered by these appeals were thus passed in contravention of the express provisions of the clause and are thus without jurisdiction.

(*b*) The orders of the R.D.O. directing the deposit of rent having been actually complied with about a couple of decades back it is no use remitting the case to him and it would serve the ends of justice if we declare that the tenants are qualified for the protection envisaged by the Act against their eviction.

(*c*) All the three appeals merit acceptance and are allowed with no order as to costs, the order for eviction of the tenant in each case being set aside.

22. I may, however, observe that it is wholly unnecessary for the decision of the appeals to determine the question as to whether it is incumbent on the R.D.O., while acting in pursuance of the provisions of clause (*b*) above mentioned, to grant time to a tenant who has been found by him to be in arrears of rent. For one thing, that question did not form the subject-matter of argument on either side at the hearing of the appeals, the only point really canvassed before us being that when the R.D.O. grants time to the tenant he cannot simultaneously pass an order of eviction which is to take effect in future and which he can pass only after the default in making the deposit is committed. Secondly, that question does not arise in these appeals as in each of the appeals before us the R.D.O. did grant time to the tenants concerned to deposit arrears of rent. As it is, Desai, J., has arrived at a categorical conclusion that according to clause (*b*) aforesaid it is obligatory on the R.D.O. to grant time to the tenant for depositing the arrears in all cases falling under clause (*a*) or clause (*aa*) of sub-section (2) of section 3 of the Act in which the tenant has not availed of the provisions contained in sub-section (3) of that section. Being unable to subscribe to that conclusion I give below my reasons for holding a contrary opinion.

23. The relevant portion of section 3 is set out hereunder:

"3 (1).—Subject to the next succeeding sub-sections, no cultivating tenant shall be evicted from his holding or any part thereof, by or at the instance of his landlord, whether in execution of a decree or order of a Court or otherwise.

(2) Subject to the next succeeding sub-section, sub-section (1) shall not apply to a cultivating tenant—

(*a*) who in the areas where............ if in arrears at the commencement of this Act, with respect to the rent payable to the landlord, does not pay such rent within the six weeks after such commencement or who in respect of rent payable to the landlord after the commencement of this Act, does not pay such rent within a month after such rent becomes due; or

(*aa*) who, in the other areas of the State of Madras, if in arrear at the commencement of this Act, with respect to the rent payable to the landlord and accrued due subsequent to the 31st March, 1954, does not pay such rent within a month after such commencement, or who in respect of rent payable to the landlord after such commencement, does not pay such rent within a month after such rent becomes due; or

(*b*) to (*d*) * * * *

Explanations I to IV.—* * *

(3) (*a*) A cultivating tenant may deposit in Court the rent or, if the rent be payable in kind, its market value on the date of deposit, to the account of the landlord—

(i) in the case of rent accrued due subsequent to the 31st March, 1954, within a month after the commencement of this Act;

(ii) in the case of rent accrued due after the commencement of this Act, within a month after the date on which the rent accrued due.

(*b*) The Court shall cause notice of the deposit to be issued to the landlord and determine, after a summary enquiry, whether the amount deposited represents the correct amount of rent due from the cultivating tenant. If the Court finds that any further sum is due, it shall allow the cultivating

tenant such time as it may consider just and reasonable having regard to the relative circumstances of the landlord and the cultivating tenant for depositing such further sum inclusive of such costs as the Court may allow. If the Court adjudges that no further sum is due, or if the cultivating tenant deposits within the time allowed such further sum as is ordered by the Court, the cultivating tenant shall be deemed to have paid the rent within the period specified in the last foregoing sub-section. If, having to deposit a further sum, the cultivating tenant fails to do so within the time allowed by the Court, the landlord may evict the cultivating tenant as provided in sub-section (4)..

(*c*) * * * * *

Explanation I.—* * * *

(4) (*a*) Every landlord seeking to evict a cultivating tenant falling under sub-section (2) shall whether or not there is an order or decree of a Court for the eviction of such cultivating tenant, make an application to the Revenue Divisional Officer and such application shall bear a court-fee stamp of one rupee.

(*b*) On receipt of such application, the Revenue Divisional Officer shall, after giving a reasonable opportunity to the landlord and the cultivating tenant to make their representations, hold a summary enquiry into the matter and pass an order either allowing the application or dismissing it and in a case falling under clause (*a*) or clause (*aa*) of sub-section (2) in which the tenant had not availed of the provisions contained in sub-section (3), the Revenue Divisional Officer may allow the cultivating tenant such time as he considers just and reasonable having regard to the relative circumstances of the landlord and the cultivating tenant for depositing the arrears of rent payable under this Act inclusive of such costs as he may direct. If the cultivating tenant deposits the sum as directed, he shall be deemed to have paid the rent under sub-section (3) (*b*). If the cultivating tenant fails to deposit the sum as directed, the Revenue Divisional Officer shall pass an order for eviction."

24. An analysis of the section clearly leads to certain indisputable propositions. Sub-section (1) creates a bar against the eviction of a cultivating tenant from his holding or any part thereof, by or at the instance of his landlord, even though the latter seeks to do so in execution of a decree or order of a Court. This bar is subject only to the provisions of sub-sections (2), (3) and (4). Sub-section (2) enacts an exception to sub-section (1) and lays down *inter alia* that sub-section (1) shall not apply to a cultivating tenant who conforms to the description in clause (*a*) or (*aa*) of sub-section (2). Both the clauses last mentioned cover tenants who are in arrears in regard to the payment of rent at the commencement of the Act or who fail to pay rent falling due after such commencement within a month after its becoming due. Sub-section (3) enables a cultivating tenant to deposit arrears of rent in Court and further provides that after notice of such deposit has been given to the landlord, the Court would embark on a summary inquiry and then adjudge whether any further sum is due to the landlord. If the Court finds that a further sum is due, "it shall allow the cultivating tenant such time as it may consider just and reasonable having regard to the relative circumstances of the landlord and the cultivating tenant for depositing such further sum inclusive of such costs as the Court may allow." If the cultivating tenant fails to pay the sum determined by the Court to be due under sub-section (3) the landlord "may evict the cultivating tenant as provided in sub-section (4)." Sub-section (4), then states that a landlord seeking to evict a cultivating tenant falling under sub-section (2) shall make an application to the R.D.O. who shall, after giving a reasonable opportunity to the landlord and the cultivating tenant to make their representations, hold a summary inquiry into the matter and pass an order *either allowing the application or dismissing it*. The sub-section further provides that if the case falls under clause (*a*) or (*aa*) of sub-section (2) in which the tenant has not availed of the provisions contained in sub-section (3) the R.D.O. *may* allow the cultivating tenant such time as he considers just and reasonable having regard......

25. Now as I read sub-section (4), it gives the R.D.O. power either to allow the application of the landlord or to dismiss it after he has held a summary enquiry into the matter.

If the application is allowed an order of eviction has to be passed. If it is dismissed the proceedings again come to an end. However if the ground of eviction is non-payment of rent, the R.D.O. is clothed with power to allow the cultivating tenant to deposit the arrears and costs as directed. The power is discretionary and, while exercising the same, it is not incumbent on the R.D.O. to grant time. If the legislature intended to make it obligatory on the part of the R.D.O. to fix a time for deposit of the arrears in all cases covered by clause (*a*) or clause (*aa*) of sub-section (2) there is no reason why it should have used the word "may" in relation to the grant of time. Support for this view is available in clause (*b*) of sub-section (3) wherein, the legislature has directed:

> "If the Court finds that any sum is due it *shall* allow the cultivating tenant such time as it may consider just and reasonable...."
> (Italics ours)

In this situation it must be held that while the opportunity of depositing the arrears of rent cannot be denied to a cultivating tenant during the course of proceedings under sub-section (3), the same is not available as of right under clause (*b*) of sub-section (4). The difference in the language used by the legislature is significant and not without purpose. The intention of the legislature appears to be that normally a defaulting tenant must seek the help of the Court all by himself and that if he does so he must be protected; but that a defaulting tenant who waits for payment of rent till he is sought to be evicted by the landlord is not necessarily entitled to the same protection. Circumstances may exist which may place him at par with a tenant covered by sub-section (3) but then it may not necessarily be so. That is why it is left to the discretion of the R.D.O. to grant time to the cultivating tenant or to deny him that opportunity. An example of a case in which no time should be allowed would be that of a tenant who, although in affluent circumstances at all relevant points of time, has failed to make payment of rent year after year in spite of repeated demands from an otherwise indigent landlord and whose conduct is, therefore, contumacious calling for no sympathy or concession. The extension to him of the same facility which is afforded to a willing tenant under sub-section (3) would be uncalled for and in fact unjust.

26. Nor do I find why the word "may" occurring in clause (*b*) of sub-section (4) be not given its ordinary meaning as denoting the conferment of a discretion on the R.D.O. and be equated with "shall" so as to make it obligatory on him to grant time to the cultivating tenant.

27. Subject to the disagreement expressed by me above I concur with the judgment of Desai, J.

Misra, J.—I agree with my learned brother, Koshal, J.

V.K. ——— *Order accordingly.*

[END OF VOLUME (1982) I M.L.J. Reports (S.C.)]

THE MADRAS LAW JOURNAL

Sathiadev, J.

R. Govindarajulu *v.* Superintendent of Police, Salem.

19th October, 1981.

W.P. No. 4636 of 1978 and W.P. No. 545 of 1979.

Fundamental Rules, rule 56 (d)—*Compulsory retirement—Order of—Should not contain any stigma—Nor by way of transitional or intermediary step before other punishments are imposed—Constitution of India* (1950), *Article* 226.

In an order passed under Fundamental Rule 56 (*d*) what has to be looked into is, whether the order on the face of it discloses misconduct etc., and if it does not contain any stigma, normally the Court sustains such an order.

Unless the impugned order is the final curtain drawn resulting in the Government servant honourably being relieved from service, the resort to Fundamental Rule 56 (*d*) cannot be allowed to act as a transitional or intermediary step before other punishments are imposed.

What is pertinent and to be assured for the ejected Government servant is that, in the eyes of the public, he should not figure out as a person who has been relieved of the office because of misconduct or due to lack of integrity etc. The power under Fundamental Rule 56 (*d*) has to be strictly adhered to, so that, on being relieved from service, the concerned person is given a chance to make good in other walks of life without a stigma at the time of termination.

The motivating factor is not relevant but if it be established that the misconducts alleged are the foundation of the impugned order and a short circuit is adopted for achieving what perhaps could not be achieved in the disciplinary proceedings, such orders of compulsory retirement cannot be upheld.

V. P. Raman, for Petitioner.

S.J. ——— *W.P. No.* 4636 *of* 1978 *dismissed; W.P. No.* 545 *of* 1979 *allowed.*

Sengottuvelan, J.

Everest Pictures Circuit, Salem, represented by its Proprietor Nallaswami Gounder *v.* S. Karuppannan.

30th October, 1981.

C.R.P. No. 1886 of 1981.

Copyright Act (XIV of 1957), *sections* 55, 62 *—Suit for declaration and injunction—Tamil talkie film — Lease of film in favour of the plaintiff—Defendant attempting to release the same picture — Suit filed by plaintiff before District Munsif — Contention of defendant that District Munsif had no jurisdiction — Contention accepted by District Munsif who ordered return of plaint—Appeal by plaintiff to District Judge — District Judge holding District Munsif had jurisdiction — Revision to High Court by defendant—Held civil Court may grant relief of declaration but injunction can be granted only by District Court under section* 62 *of the Copyright Act.*

The plaintiff obtained the lease of the right to exhibit a Tamil talkie film from one *S*. The defendant attempted to release the same film. Therefore the plaintiff filed a suit for declaration and permanent injunction in respect of the film before the District Munsif's Court. The defendant raised the objection that the District Munsif's Court had no jurisdiction to try the suit and that the suit was not maintainable. This objection was accepted by the District Munsif who ordered the return of the plaint. The plaintiff filed an appeal to the District Court which held that the District Munsif had jurisdiction. The defendant filed a revision to the High Court.

Held, the civil Court might grant the relief of declaration as to who was entitled to the copyright. But further reliefs with reference to injunction, accounting etc., could only be obtained under section 62 of the Copyright Act, from the Court having jurisdiction *viz.*, District Court.

Since the present suit was one for declaration and injunction and no useful purpose would be served by granting the mere relief of declaration, the only course available to the learned District Munsif was to return the plaint for presentation to the proper Court.

Raghavan, for Petitioner.

Jagadeesan, for Respondent.

S.J. —— *Petition allowed*.

P. R. Gokulkrishnan, O.CJ. and Venugopal, J.

M. Manirajan *v.*
Assistant Commissioner of Police,
Mylapore Range, Madras-4.

9*th November*, 1981.

W.A. No. 756 of 1980.

Madras City Police Act (III of 1888), *section* 36—*Lodging House — Licence for running—Lodging house run in rented premises, after obtaining requisite licence from Police—Premises sold to another—Rent paid to the new owner accepted—New landlord not giving consent for continuance of the lodging house —Application for renewal of licence rejected —Appeal to appellate authorities also rejected—Writ petition also rejected—On writ appeal tenant held to be statutory tenant—Direction issued to Commissioner of Police to consider application in accordance with law*.

M was running a lodging souse in a rented premises in Mylapore, Madras. He had obtained the consent of the landlord for running a lodging house and had also obtained a licence under the Madras City Police Act. Subsequently, the landlord sold the premises to another. *M* attorned tenancy to the new landlord and was paying rent to the new landlord. However, the new landlord did not agree for the continued running of the lodging house. When *M* applied for renewal of the licence under the Madras City Police Act, this was rejected on the ground that the present landlord had objected to the running of a lodging house in the premises. Against this, *M* filed an appeal to the 2nd respondent herein who dismissed the appeal. Thereafter *M* filed a revision to the Commissioner of Police, who also dismissed the revision. This order was challenged in a writ petition. The learned single Judge of the High Court dismissed the petition at the stage of the admission itself. Against this *M* filed an appeal.

Held: Inasmuch as the appellant is a statutory tenant protected under the Tamil Nadu Buildings (Lease and Rent Control) Act, he continues to be a tenant until evicted as per the provisions of the said Act. The refusal to grant renewal of the licence is not based on relevant factors and as such the matter has to be remanded to the file of the Commissioner of Police, City of Madras, the third respondent herein, for the purpose of disposal afresh.

V. Sridevan, for Appellant.

Government Pleader, for Respondents.

S.J. —— *Appeal allowed*.

Ratnam, J.

N. M. Venkatesan *v.*

K. Ramalingam.

19*th November,* 1981.

C.R.P. No. 3209 of 1981.

Civil Procedure Code (V of 1908), *section* 148-*A—Effect of entering caveat—Procedure to be followed by the Court.*

The petitioners in this case by reason of the provisions of section 148-A of the Code of Civil Procedure, having entered a caveat, became entitled to be served through Court with a copy of the application to be filed in a suit or proceeding. But it appears that this procedure had not been adhered to. It may be that the District Judge was inclined to grant an order of interim suspension as he did. But even so the mandatory provisions of section 148-A of the Code cannot be lightly disregarded, as the very provision is conceived with the object of preventing parties to a litigaties from securing *ex parte* orders without notice. In this case after the caveat had been entered by the petitioners, notice of the application should have been served through Court in which case the petitioners might have appeared and showed a cause against the interim suspension. The entering of the caveat on behalf of the petitioners had been brought to the notice of the District Judge. But before passing the order of interim suspension, care had not been taken to ascertain whether the notice of application had been served on the caveator. It is rather unfortunate that a very salutary provision like section 148-A intended to check the obtaining of interim orders behind the back of the litigants, had not been observed in the present case, inspite of the fact that the petitioners had done all that was necessary on their part to see to it that no such order was passed and the District Judge was also fully aware of the seizure. Section 148-A, Code of the Civil Procedure is an effective check on the obtaining of orders by a litigant without the knowledge of the other side and more than others the Court cannot contribute to the breach of that provision. It should therefore be the endeavour of all Courts in cases where caveat has been entered under section 148-A to give full effect to the provisions of that section in letter as well as in spirit.

C. Ramanathan, for Petitioner.

M. Veluswamy, for Respondent.

R.S. ——— *Ordered accordingly.*

G. Ramanujam and
G. Maheswaran, JJ.

P. K. R. Radhakrishna Chettiar and Sons *v.*

Tahsildar (Debt Relief), Kumbakonam.

1*st February,* 1982.

W.P. Nos. 6075, 6402 and 6463 of 1981.

Tamil Nadu Debt Relief Act (XIII of 1980) *—Mortgage decrees and money decree passed —Decrees under execution—Application by judgment-debtor before Tahsildar, for issue of a certificate of discharge — Jurisdiction of Tahsildar to declare the decree-debts as discharged negatived—Proper course to be followed indicated.*

In the present case there is no dispute that in all the three cases, decrees have already been obtained by the petitioners in a civil Court. In two cases mortgage decrees have been passed and in another case money decree has been obtained. All the said decrees are under execution before the civil Court. Notwithstanding the existence of the said decrees the Special Tahsildar and the Sub-Collector, Kumbakonam, have exercised their power and have granted certificate of discharge in favour of the debtors. By granting such certificate they have in fact nullified the decrees passed by the civil Court. The statute does not bypass the decrees already passed by the civil Court. Admittedly there is no *non obstante* clause in either of the sections 4, 5 or 6. In the absence of a *non obstante* clause which is only in cases where the debt is not merged in a decree, the Tahsildar and the Appellate Authority cannot exercise their power under sections 5 and 6. In section 4 there is no reference to Tahsildar or Sub-Collector declaring or ordering loan as having been discharged under section 4. Therefore the fact that

no *non obstante* clause has been used in sections 4, 5 or 6 will clearly indicate that the legislature does not contemplate the authorities constituted under the Act, sitting in judgment over decrees passed by the civil Courts. In this view of the matter the Special Tahsildar and the Sub-Collector have exceeded their statutory powers in declaring a decree debt which is pending execution before a civil Court as having been discharged. Even assuming that the debtors in their proceedings are entitled to the benefits of the said Act, they have to approach the civil Court where the matters are pending with an application claiming benefits under the Act and praying for investigation of their claim by the civil Court.

B. Rajagopalan, for Petitioner.

The Government Pleader, for Respondent.

R.S. ——— *Petition allowed.*

S. Mohan, J.

Muthiah Asari *v.* Ramanathan.

3rd December, 1981.

C.R.P. No. 3232 of 1980.

Tamil Nadu Buildings (Lease and Rent Control) Act. (XVIII of 1960) *(as amended by Act XXIII of* 1973), *section* 10 (3) (a) (i) —*Pendency of eviction proceedings — Purchase of demised building by the wife of the landlord—Tenant, if can dictate which house landlord should choose — Subsequent event, whether can be taken notice of by the Courts.*

Two propositions seem to have been diluted if not done away with by the Supreme Court decisions. The first of them is that subsequent events cannot be taken note of. As a matter of fact it is apparent from the note of decisions in *Arjun* v. *Yogendrakumar Gupta,* (1979) T.L.N.J. 464, that subsequent events should not be taken note of and the decision reported in *P. Venkateswarlu* v. *The Motor and General Traders,* (1976) 1 S.C.J. 393: (1976) 1 An.W.R. (S.C.) 35: (1975) 1 S.C.C. 770: A.I.R. 1975 S. C. 1409, is referred to. However that decision does not seem to be correct in view of the later ruling by the Supreme Court in *Hasmat Rai* v. *Raghunath Prasad,* (1981) 3 S.C.C. 103: A.I.R. 1981 S.C. 1711. Therefore it would be necessary to take note of subsequent events. Though the decision came to be laid down under the Madhya Pradesh Accommodation Control Act, nevertheless, that is the position of law applicable to all rent control legislation. Again the theory that a tenant cannot dictate terms as to which of the houses the landlord should choose also cannot be held to be good in view of the authoritative pronouncement of the Supreme Court in *M. M. Quasim* v. *Manohar Lal Sharma,* (1981) 3 S.C.C. 36: A.I.R. 1981 S. C. 1113. But in the instant case the opposite view adembrated in *M. M. Quasim* v. *Manohar Lal Sharma,* (1981) 3 S.C.C. 36: A.I.R. 1981 S.C. 1113, cannot be of any use to the revision petitioner because it is established that this is the only building of the landlord.

S. Thiagaraja Ayyar and *K. Sankar,* for Petitioner.

T. R. Mani and *G. Krishnan,* for Respondent.

R.S. ——— *Petition dismissed.*

G. Ramanujam and
G. Maheswaran, JJ.

B. R. Jagannatha Rao *v.* The Official Receiver of North Arcot, Vellore-4.

9th February, 1982.

W.P. No. 6881 of 1980.

Tamil Nadu Debt Relief Act (XIII of 1980) —*Petitioner adjudicated insolvent—Properties vested in Official Receiver—Properties brought to sale — Application by petitioner before the Special Tahsildar for issue of a certificate of discharge — Petition before Official Receiver claiming benefits under the Act—Prayer for stay of sale—Jurisdiction of Tahsildar to issue discharge certificate—Petitioner to seek remedy before Insolvency Court—Writ of prohibition not the proper remedy.*

Held, that so long as there is no decision by any Court that the petitioner is entitled to the benefit of the Tamil Nadu Act XIII of 1980, the respondent cannot accept the petitioner's assertion that he is entitled to the benefits of the Act. The respondent cannot also take upon himself the responsibility of giving a decision one way or other on the claim of the petitioner that he is a debtor as defined

under the Act. It cannot be disputed that the respondent, while administering the estate of the insolvent, is acting under the supervision of the Insolvency Court. Therefore if the petitioner is aggrieved against the proposed sale he can file an application before the Insolvency Court seeking a direction to the Official Receiver based on the fact that the petitioner is entitled to the benefits of the Act by adding necessary materials to establish that he is a person coming within the definition of debtor under that Act. Therefore the petitioner has to seek the remedy by way of application before the Insolvency Court and not to approach the High Court for the issue of a writ of prohibition.

N. Jothi, for Petitioner.

D. K. Srinivasagopalan, for Respondent.

R.S. ——— *Petition dismissed.*

Fakkir Mohammed, J.

Chithiraivadivu Ammal *v.*
Dr. Moses T. Sundar.

24th December, 1981.
C.R.P. No. 1851 of 1981.

Tamil Nadu Buildings (Lease and Rent Control) Act (XVIII of 1960)—Petition for eviction by landlord—Allegation of wilful default —Lump sum payment of rent being made by tenant and accepted by landlady without demur for a number of years—Whether payment in lump sum amounts to wilful default—No wilful default in the circumstances.

Held, that in this case it cannot be said that the tenant has committed any wilful default as the landlady had led the tenant to believe that he might remit the rents in lump sum and had been receiving the rent in lump sum from about 1955 till the notice was sent for the first time in 1976.

S. Desikan, for Petitioner.

B. Kumar, for Respondent.

R.S. ——— *Petition dismissed.*

S. Mohan, J.

P. Gokulakrishnan *v.*
M/s. Asiatic Automobiles, Madras-2.

24th December, 1981.
C.R.P. No. 1486 of 1981.

Tamil Nadu Buildings (Lease and Rent Control) Act (XVIII of 1960) *(as amended by Act XXIII of* 1973), *section* 10 (3) (a) (iii) *—Partnership business — Eviction petition at the instance of a minor partner—Minor has no capacity to represent the partnership.— Petition not maintainable.*

The decision reported in *Chidambaram* v. *National City Bank of New York*, (1936) 71 M.L.J. 373: 44 L.W. 310: A.I.R. 1936 Mad. 707, shows that a petition cannot be maintained at the instance of a minor who has no legal capacity to represent the partnership. That being so, the petition for eviction cannot be maintained at the instance of the partnership by a minor. Therefore on this very simple ground the civil revision petition is liable dismissed.

The Advocate-General, for *T. Thirumaran* and *D. Sankaran*, for Petitioner.

P. M. Jummakhan, for Respondent.

R.S. ——— *Petition dismissed.*

S. Nainar Sundaram, J.

V. V. Venkataraman *v.* **S. Radhakrishnan.**

15th December, 1981.

C.R.P. No. 4286 of 1981.

Tamil Nadu Buildings (Lease and Rent Control) Act (XVIII of 1960) *as amended by Act (XXIII of* 1973), *section* 10 (3) (a) (*i*), *—Eviction petition by landlord — Requirement of the building for own occupation — Question of relative hardship—Proviso has no relevance.*

Section 10 (3) (*a*) (i) of the Tamil Nadu Buildings (Lease and Rent Control) Act qualifies all applications, either under section 10 (3) (*a*) or section 10 (3) (*b*) or section 10 (3) (*c*) and enjoins upon the Rent Controller to satisfy himself with reference to relative hardship or inconvenience as between the tenant and the landlord. The said proviso has no relevance at all in the case of any application other than one under section 10 (3) (*c*).

S. Meenakshisundaram and *G. Ravisankar,* for Petitioner.

R.S. ——— *Petition dismissed.*

V. Sethuraman, J.

Chellammal *v.* **Seethalakshmiammal.**

21st December, 1981.

C.R.P. No. 1330 of 1981.

Tamil Nadu Debt Relief Act (XL of 1979), *section* 21 *and Indian Limitation Act (XXXVI of* 1963), *section* 5, *if can be invoked to excuse delay — Applicability of the provisions of the Limitation Act to section* 21.

Article 127 of the Indian Limitation Act provides for a period of sixty days from the date of the sale for setting aside the sale in execution of the decree, including any such application by a judgment-debtor. As a different period was provided for in section 21, the submission was that the words were introduced so as to get Article 127 out of the way. The Legislature did not completely rule out of consideration the entire Limitation Act. The words have to be understood only in the context of avoiding a conflict between the Limitation Act and section 21 of the Tamil Nadu Debt Relief Act (XL of 1979). Further there is the expression "notwithstanding anything contained in the Code of Civil Procedure, 1908" occurring in this very section. It does not mean that the whole Code of Civil Procedure is to be excluded, in which event the executing Court which functions under the Code will have no part to play. The provisions of section 5, Limitation Act are not excluded.

S. Ramalingam, N. Thiagarajan and *G. Manjuda,* for Petitioner.

A. Shanmughavel and *Jayalakshmi Shanmughavel,* for Respondent.

R.S. ——— *Petition remanded.*

V. Ratnam, J.

Govindaswamy & Company *v.*

Basheer by P.A.

C.R.P. No. 3094 of 1981.

23rd December, 1981.

Tamil Nadu Buildings (Lease and Rent Control) Act (XVIII of 1960), *as amended by Act (XXIII of* 1973), *section* 2 (8)—*'Association of persons', whether can be tenant—Unauthorised subletting established — Eviction order upheld.*

One of the fundamental requirements needed for resort to the provisions of the Act XVIII of 1960 is the subsistence of relationship of landlord and tenant between the parties. It is on account of this that it became necessary to define the expressions "landlord" and "tenant" for purposes of the Act. Section 2 (8) while defining who a tenant is for purposes of the Act, does not in any manner advert to the personality of the tenant. The user of the generic expression "person" while defining the word "tenant" is indicative that it is intended to take in all classes of persons, irrespective of whether they are legal persons or not. In the absence of any definition of the word "person" in the Act, the ordinary meaning and not the restricted meaning of legal person should be given. In the absence of any definition of the word "person" in the Act the meaning of that expression is also to be ascertained by the definition of the expression given in section 3 (22) of the Tamil Nadu General Clauses Act as including any company or association of individuals, whether incorporated or not. So construed the expression "person" in section 2 (8) of the Act would include individual, company or association of individuals, whether incorporated or not. There is no provision in the Act which compels the giving of a restricted meaning to the expression "person" in section 2 (8) of the Act. There may be tenants in occupation of premises who are not person in the eye of law and even if such tenants render themselves liable to be evicted under one or other of the provisions of the Act, then no proceedings at all can be taken, though the relationship of landlord and tenant might still subsist. A consideration of the provisions of the Act does not establish that is the intention of the Act while it purports to regulate the relationship of landlord and tenant in letting of residential and non-residential buildings and control of rents. In the instant case, the first petitioner and the second and third petitioners would be "persons" for the purpose of section 2 (8) of the Act, though not legal persons as such, as the first petitioner and the third petitioner can be considered to be an "association of persons" falling within the definition of section 3 (22) of the Tamil Nadu General Clauses Act.

The present case is a clear instance of total unauthorised subletting. The Authorities below have adverted to the evidence and have concurrently found that the subletting of the premises had been established. This finding is amply supported by evidence on record and does not merit any interference.

Mustafa, for Petitioner.

R.S. ——— *Petition dismissed.*

V. Ramaswami,
S. Natarajan,
V. Sethuraman,
S. Ratnavel Pandian and
R. Sengottuvelan, JJ.

S. M. Krishnan *v.* The State of Tamil Nadu, represented by the Chief Secretary to Government, Madras-9.

23rd December, 1981.

W.A. Nos. 317 of 1981 and W.P. Nos. 5475, 5669 and 5827 of 1981.

(A) *Commissions of Inquiry Act* (*LX of* 1952), *sections* 2, 3, 5, 11—*Scope—Notification by State Government appointing Commission of Inquiry — Originally directed to inquire into allegation of irregularities into export of rectified spirits from Tamil Nadu into Kerala—Subsequent enlargement of reference to inquire into earlier similar transactions and allegations of corruption—Validity—Notification on 30th May,* 1981, *replacing earlier Commission by another on resignation by former—Central Government Notification appointing also a Commission on* 18*th June,* 1981, *to inquire* inter alia *into allegations made by some legislators from Kerala and members of Parliament concerning import of rectified spirits into Kerala from Tamil Nadu —Effect—Validity of the Notifications challenged.*

(B) *Constitution of India* (1950), *Article* 246 *and Legislative Lists—List I, Entries* 42, 52 *and* 94—*List II, Entries* 8 *and* 24—*List III, Entries* 1, 33 *and* 45—*Interpretation and relative scope of.*

(C) *Constitution of India* (1950), *Article* 226 *Colourable exercise of power, what is—Political motivation, if relevant*—Certiorarised mandamus *and other reliefs sought.*

Held, by the Court:—The Central Government's Notification and the State Government's Notification covered different subjects and did not cover the same subject-matter. There was no repugnance on that ground, *Karnataka State* v. *Union of India,* (1978) 2 S.C.J. 190: (1978) 2 S.C.R. 1: (1977) 4 S.C.C. 608: A.I.R. 1978 S.C. 68, followed.

The Notification, dated 18th June, 1981 made by the Central Government appointing a commission of Inquiry cannot be questioned as it covers an inquiry extending to two or more States. It conforms to and satisfies the requirements of section 3 of the Commissions of Inquiry Act. The Commission appointed by the Central Government is valid.

Per Majority (*Sethuraman, J., Natarajan and Sengottuvelan, JJ.: concurring*).—The appointment of the Commission of Inquiry under the State Government Notification, dated 30th May, 1981, is valid.

The definition "appropriate Government" as given in section 2 (*a*) of the Commissions of Inquiry Act, would show that the Central Government has wider powers of inquiry in the sense that it could make an inquiry into any matter relatable to any of the entries enumerated in all the three Lists of the Seventh Schedule to the Constitution, while the State has powers of inquiry only into any matter relatable to any of the entries in List II or List III.

An analysis of section 3 (1) read with section 2 (*a*) of the Commissions of Inquiry Act (LX of 1952), would show that it is necessary to find out:

(1) Whether the "appropriate Government" has formed the opinion that it is necessary to appoint a Commission of Inquiry; and

(2) Whether for the purpose of making the inquiry there is a definite matter or there are definite matters of public importance.

In the case of the State Government appointing a Commission as here, it is also necessary to scrutinise whether the matter is relatable to any of the entries in List II or List III.

If it does not fall into any of these two lists, then, even assuming that the other requisites of the provision are satisfied *viz.*, the formation of the opinion and the existence of a definite matter of public importance, the appointment would not be valid.

The question to be examined is whether the relevant activity envisaged in the Notification is liable to fall within the scope of entry 42 of List I "Inter-State trade and commerce". The Madras Prohibition Act does not, and the object of the present enquiry is not to deal with inter-State trade and commerce, and from

the particular transactions having an inter-State character, the enquiry cannot be taken to be an investigation into inter-State trade and commerce as such. The circumstance that the transactions have an inter-State element is of no significance. The exercise of the legislative or inquisitorial power is not on inter-State transactions as such. In pith and substance the enquiry is only to see how certain transactions in rectified spirits were put through and whether there is a sinister element in such transactions. The enquiry does not fall within or offend Entry 42, List I. Further it is doubtful if there is an element of *trade* and *commerce* in these transactions. Any inter-State transaction cannot be labelled as a transaction in inter-State trade and commerce. If the element of trade and commerce is absent, then also it would not come within Entry 42.

The activity in liquor is not liable to fall within the scope of the expression "trade and commerce", and therefore, it cannot also come within the scope of the expression "inter-State trade and commerce". The Tamil Nadu Prohibition Act is not a legislation dealing with inter-State trade and commerce. In order to ensure that the law relating to prohibition was properly enforced, it was necessary to place restrictions on import and export. The word "import or export" has for that particular enactment a meaning of movement outside the territory where the law relating to prohibition is enforced. At a time when there was a partial prohibition in force in the State, the movement of the intoxicants from the district in which the prohibition was enforced to other districts and *vice versa* was restricted. The import and export dealt with in the relevant legislation is, thus, very much necessary for its enforcement and thus within the scope of legislative Entry No. 8 of List II. The incidental encroachment, if any, in order to see that the law of prohibition is not violated is thus within the field of permitted encroachment envisaged by the pith and substance rule. The inquiry contemplated cannot fall within the scope of "inter-State trade and commerce". The inquiry is within the scope of the legislation relating to *prohibition* in the State. If the Parent Act does not fall within the scope of inter-State trade and commerce, then the inquiry relating to the activities under the said Act cannot be taken out of it and placed under the head "Inter-State trade and commerce".

In the present case the relevant notification, even taking it to be an exercise of a legislative power, cannot be considered to encroach on any field occupied by a Central statute or the notifications made thereunder. The regulation relating to molasses and ethyl alcohol was of a restricted nature. There was only a price control over ethyl alcohol, and as far as molasses are concerned there was a regulation as regards its disposal. Both the Ethyl (Price Control) Order and the Molasses Control Order are to be administered *only* by the State and it cannot be disputed that the State can utilise the mechanism of inquiry under the Commissions of Inquiry Act to see how far the control administered by it has been complied with. The present inquiry relating to the disposal of rectified spirit manufactured in Tamil Nadu would, thus, fall within the scope of the field carved out for the State.

The State also has power to legislate on industries under Entry 24 of List II, that is, industries subject to the provisions of Entries 7 and 52 of List I. Entry 7 deals with industries declared by Parliament by law to be necessary for the purpose of defence or for the prosecution of war. There is no declaration under Entry 7 of List I with reference to the industry under consideration. As far as Entry 52 is concerned, it has been pointed out that the State Legislature has not lost its legislative power to see to the proper enforcement of the law relating to prohibition coming within the scope of Entry 8 of List II.

The appointment of a Commission of Inquiry is an administrative act, though the field of inquiry and jurisdiction to appoint are indicated by the relevant legislative lists. It is the State Government which has appointed the Commission and the power of appointment is to be traced to its administrative power. The power of appointment has to be traced only to the law relating to "prohibition" falling within Entry 8 of List II. Understood either as legislative power or administrative power, the matter falls within the competence of the State Government.

There may be colourable exercise of power, either by executive or by the legislature. So long as the power was available to the legislature or to the executive the motive which

impelled the executive authority or the legislature to act in a particular manner would be irrelevant. The only restriction is that there cannot be a valid attempt at exercising the power for a purpose different from that for which it was conferred. In other words, there cannot be a fraud on a power. The issue of Notification on 11th February, 1981 could not be actuated by any *male fide* motive, because that was with reference to certain allegations made in the Legislature by the Leader of the Opposition himself as against the present Government. The question of *mala fides* would thus be relevant only to the amended notification issued on 9th May, 1981 enlarging the terms of the original notification. Political motivation would be irrelevant. So long as there were allegations which merited scrutiny, the State Government could exercise the power. When a number of Legislators, who, it should be presumed, ought to be aware of their responsibility came forward making certain allegations, the charge of *mala fides* cannot be laid, if the Government considered it fit to examine them through the appointment of a Commission.

Primarily all State laws have no extra-territorial operation. However, sometimes the law affects some property or person outside the State. In such a case, one of the tests applied is to see whether the *prima facie* extra-territorial character is justified by the principle of territorial nexus. So long as there is territorial nexus, it would be possible to exercise the power of making an inquiry even outside the State. Just as in a litigation, a person who is in a different State, can be sued with reference to the cause of action arising within the State, so also in the case of administrative or executive acts, the question of their propriety could be gone into in so far as those administrative or executive acts are traceable to the exercise of a power within the State and the transactions have their connection with this State. There is no extra-territorial operation with reference to the notification under consideration. There is provision in section 5 of the Commissions of Inquiry Act, which has been made applicable to this Inquiry Commission, to require any person to furnish information on points relevant to the subject-matter of enquiry. The default, if any, is liable to call for the application of sections 176 and 177 of the Indian Penal Code. Thus it is not as if the Commission would have no effective function to discharge, because part of the enquiry would extend to operations outside the State. The validity of the appointment of the Commission is not in the least affected by the fact that some parts of the inquiry may have at some stage or other to be directed to what happened outside the State. One other aspect to be noticed about the provision ns that it does envisage the existence of two Commissions more or less simultaneously. Under clause (*a*) simultaneous existence is possible where the State obtains the approval of the Central Government and appoints a Commission. Similarly the Centre can appoint another Commission while the State Commission is functioning, where it is of opinion that the scope of the inquiry should be extended to two or more States. As it would be improper to attribute to the Legislature any intention to enact a provision, which is either *otiose* or unnecessary or meaningless, it is necessary to give an appropriate meaning to the provision, even if there is some difficulty in its construction.

The Union has been given power to appoint a Commission in cases where the enquiry comprehends more than one State. In such a case, the power to appoint a Commission can be exercised even if the State concerned had appointed a Commission.

The words "unless the Central Government is of opinion that the scope of the inquiry should be extended to two or more States" were added persumably because there may be a general inquiry, say, on Provincial Excise or Sales-tax in one State. The Centre may consider it necessary to "extend" the scope of such an inquiry by appointing a parallel Commission so as to gather the relevant facts from more than one State. In order to see that its appointment is not defeated by any objection that the State has already appointed a Commission, an enabling power was taken so that the Central Government could appoint another Commission with the same or similar terms of reference so as to cover other States.

There is nothing in section 3 (1) of the Act or the proviso to annihilate the operation of a Commission of Inquiry set up by a State, when the Central Government appoints one. There is a provision for a Commission to cease to exist by an appropriate notification in

the official gazette. There is no other provision by which a Commission of Inquiry would cease to function. There is, however, possibility of cessation of the functioning of the Commission, because of the death or resignation and also by efflux of time, the period fixed in the notification having run out, without any extension of time being notified. But in such a case (as it happened on the resignation of Justice Kailasam here), it would be open to the State Government, (or the Central Government, as the case may be), to appoint another Commission of Inquiry so as to gather the same information or facts which were envisaged by the prior notification. In the light of the above discussion, it would be clear that the Sadasivam Commission does not go out of existence merely because the Central Government's appointment of another Commission.

The source of the power to appoint the commission of inquiry is the Central Act. The subject-matter for enquiry is to see what happened in the execution or enforcement of the State Act. Hence, the absence of reference to the Prohibition Act, when the appointment is under the Central Act, does not vitiate it, and is of no consequence.

Considered from every point of view, the appointment of the Commission of Inquiry cannot be said to be invalid, requiring the issue of an appropriate writ in the present case.

Section 2 (*a*) (i) of the Commissions of Inquiry Act, 1952, defines the term "appropriate Government" as meaning (*i*) the Central Government, in relation to a Commission appointed by it to make an inquiry into any matter relatable to any of the entries enumerated in List I or List II or List III in the Seventh Schedule to the Constitution and (*ii*) the State Government, in relation to a Commission appointed by it to make an inquiry into any matter relatable to any of the entries enumerated in List II or List III in the Seventh Schedule to the Constitution. This shows that the Central Government's power of inquiry is not confined to any single list. It could make inquiries for the purpose of informing itself on any of the matters relatable to any of the entries in all the three lists.

The word "matter" occurs in each of the clauses of Article 246. The marginal note to Article 246 runs as follows:—

"Subject-matter of laws made by Parliament and by the Legislatures of States".

The intention of the constitution-makers as to what the word "matter" means appears to be signified by the marginal note.

Though a marginal note is not to be referred to for construing a provision as pointed out in some older decisions, the rigour of this rule has been relaxed in later decisions in U.K. and India, especially in cases where the marginal note can be regarded as inserted or assented to, by the Legislature. (*See* page 163 of Legislation and Interpretation by Jagdish Swarup for the cases discussed therein). In the Government of India Act the same marginal note appeared with reference to the corresponding provision of section 100, therein. When the Constituent Assembly took over the same provision with the same marginal note, it can be taken that it has assented to it. It would thus represent the legislative mind on the meaning of the word in the provision. The word "matter" means 'subject-matter'. It is this expression "matter" which again finds a place in section 2 (*a*) of the Commissions of Inquiry Act. The enquiry is to relate to any subject-matter comprehended by the appropriate Lists.

It is thus clear that the subject-matter of the relevant entries in the three Lists will be within the scope of the Central investigation, and the subject-matter of the Entries in Lists II and III would be within the ambit of the State inquiry. There is also a specific Entry *viz.*, Entry 4 in List I relating to "inquiries, surveys and statistics for the purpose of any matters in this List". Entry 45 of List III, which is the Concurrent List, relates to inquiries and statistics for the purposes of any of the matters specified in List II or List III. In the light of the two Entries *viz.*, Entry 94 of List I and Entry 45 of List III, the amplitude of the power of the Centre to make an inquiry covers all the Lists. The power of the State to make an inquiry is only with reference to matters in List II or List III. From the fact that the Centre or the Union has no power to legislate on the topics of List II, it is clear that the power of inquiry cannot be equated to a power to legislate. As already seen, the object of the inquiry is only to inform the appropriate Government, and it is not concerned with the power to legislate. It may be that the Centre may in pursuance of the

inquiry embark on legislation on matters covered by List I or List III and the State on matters covered by List II or List III. But that is only a possibility and the power to make inquiry cannot be equated to a legislative power.

Having regard to the power of the Centre to make inquiries on all topics set out in any of the three Lists and also the residual power under Entry 97 of List I available to cover any of the matters not enumerated in List II or List III, the question as to whether the relevant inquiry falls within the scope of any matter set out in List I or List II or List III, loses significance in so far as the centre is concerned. The Centre can go into all matters and, therefore, the appointment of an Inquiry Commission by it cannot be challenged even if the matter is relatable to List II. It is thus really unnecessary for our present purpose, though we have expressed earlier an opinion, to go into the question as to whether the matter is within any of the Entries in the Lists. That point would be relevant only for finding out whether the State has transgressed its jurisdiction in making the appointment of an Inquiry Commission in relation to any matters in List I. Even in respect of the law relating to "prohibition", the Centre would have powers to make an inquiry and, therefore, the appointment of an Inquiry Commission by the Centre even with reference to Entry 8 or List II would be valid.

The expression "the same matter" has to be construed in the sense that the matter to be enquired into by the two Commissions is identical. So long as the scope of the inquiry either geographically or in relation to the goods or persons is different, the mere existence of some common area, where there may be an overlapping of the subject-matter, will not make the matters before the respective Commissions identical.

The appointment of the respective Commissions by the two State Governments cannot in any way affect the power of the Central Government to order an enquiry into the relevant matters covered by its notification.

Per Minority (*Ramaswami, J., Ratnavel Pandian, J.* concurring):—The appointment of a Commission of Inquiry under the State Government Notification, dated 30th May, 1981, cannot be upheld, the Notification being *ultra vires* and void.

It is true that section 11, Commissions of Inquiry Act, contemplated a Commission appointed otherwise than under section 3 of the Act. But it refers to appropriate Government, thereby attracting the definition of 'appropriate Government' in section 2 which limits the jurisdiction of the State Government in the matter of appointment of Commissions to any matter relatable to any of the entries enumerated in List II and List III alone. Even apart from this, this provision will have to be read in conjunction with Article 162 of the Constitution which limited the executive power of the State to matters with respect to which the Legislature of the State has power to make laws.

Though in all the three lists specific entries relating to enquiries and statistics are found the Constitution-makers have made a deliberate departure in omitting an entry relating to enquiry in List II of the Seventh Schedule and providing for an enquiry, survey and statistics in List I, Entry 94 and for an enquiry and statistics in List III. The need for a power of enquiry by Parliament in respect of List II could also be traced to the provisions of some of the Articles like 249, 250, 252, 355 and 356. The entries in 94 of List I and 45 of List III as well as the definition of 'appropriate Government' in the Commissions of Inquiry Act, use the words 'matters in the entries' referring to the power and Article 246 relating to the legislative powers of the Parliament and the State also uses the word 'matters' enumerated in the list with reference to the power to make laws. A combined reading of all these provisions, in our opinion, leave no doubt that the power of enquiry is co-extensive with the subject-matter of the entries which in terms are broad legislative heads. Thus, there is no general power of enquiry *de hors* the legislative field and the power of enquiry is limited to and co-extensive with the subject-matter of the legislative entries in Lists II and III though it is not limited to the scope or content of any contemplated legislation. Therefore, though the Commission of Inquiry appointed by a State Government may be a mere fact finding authority, the subject-matter of the enquiry and the finding thereon shall be relatable to any of the entries in List II or List III only, though not to a law made or to be made under that entry.

The legislative powers of Parliament with regard to inter-State trade and commerce are unqualified and exclusive whereas the power of the State Legislature to legislate even with reference to trade and commerce within the State are subject to the concurrent legislative power of the Union.

There could be no doubt that the Parliament is competent to legislate on inter-State trade in liquor under Entry 42 of List I. While making a law on inter-State trade or commerce, the Parliament could also regulate the intra-State activities when they are so related that the regulation of inter-State trade alone would be ineffective or when persons subjected to inter-State regulation would otherwise suffer discrimination.

Mala fides is a state of mind and the factors impelling it to act in a particular manner, the process of divining that state of mind is not an easy task at all as it is fraught with possibilities, probabilities and implications beyond the ken of objective reasoning based on factual materials. In considering this question, it should be kept in mind that rarely there can be direct proof of *mala fides* especially in cases like this. It is in the light of this the totality of the circumstances which were referred to shall be considered in giving a finding on *mala fides*. The facts in this case and the circumstantial internal evidence intrinsically flowing therefrom do clinch the issue against the extended notification.

The subject-matter of the inquiry under the impugned Notification of the State Government was relatable to Entries 42 and 51 of List I and therefore beyond the competency of the State Government's power of appointment of a Commission. The amplified or the extended portion of the reference was vitiated by lack of *bona fides* and non-fulfilment of the main part of section 3 (1) of the Commissions of Inquiry Act. Therefore the entire Notification was *ultra vires* and void. If the enquiry ordered under a Notification covered more than one State in respect of a definite matter of public importance, then it must be presumed that the Notification specifically states that the subjective satisfaction related not only to the definite matter of public importance and its necessity to enquire into, but also on the scope of the enquiry extending to more than one State. The statement in the Central Notification that there was an illegal movement from the State of Tamil Nadu to the State of Kerala, would suggest that the enquiry has to be held covering both the States of Tamil Nadu and the State of Kerala. The Annexure also refers to the allegations made in the memorandum submitted by 21 members of Parliament belonging to Tamil Nadu as also the memorandum received from some members of the Kerala Legislative Assembly. When the reference was with reference to these allegations, there could be no doubt that the Central Government enquiry covered more than one State. The reference in the counter-affidavit on behalf of the Central Government that the case falls within the Proviso (*b*) to section 3 (1) of the Commissions of Inquiry Act, therefore, could only mean that the Central Government was of opinion that the scope of enquiry is to cover two or more States. The power of the Central Commission is to be traced only to section 3 (1) and the Proviso does not enable the Central Government to enlarge the scope of enquiry of the State Commission itself but such a power will have to be exercised only by appointment of a different Commission. The perimeter of the opinion under section 3 (1) takes within it all the aspects of subjective satisfaction, namely, the definite matter of public importance, the necessity for enquiry and the necessity for covering that enquiry to two or more States. The counter-affidavit has fully set out the facts which show that legally and factually the scope of the enquiry covered more than one State. Even assuming that the counter-affidavit proceeded on the basis that it is a case which will be covered by Proviso (*b*) in the sense that the subject-matter of the two notifications are the same, the Notification could not be questioned as in our opinion the Notification covers an enquiry extending to two or more States and the opinion referred in the preamble to the notification covered that also. In the circumstances, the notification of the Central Government was not made on any mistaken assumption of power without any relevant or valid subjective satisfaction.

R.S. ——— *Writ petition dismissed.*

S. Nainar Sundaram, J.

V. Kuppuswami *v.*

State of Tamil Nadu.

12th March, 1982.

W.P. No. 1285 of 1982.

Tamil Nadu Prohibition Act (X of 1937), *section* 23 (4)—*Scope of section* 23 (4)—*Not offending Article* 14 *of the Constitution of India* (1950).

The only construction that may be put on section 23 (4) is that it is meant for being exercised pending an enquiry under section 23 (3) of Act X of 1937. The power under section 23 (4) cannot be taken to be a substantive power to impose the substantive punishment of suspension without affording an opportunity to the holder of the licence to state his objections. One other aspect that should not be omitted to be taken note of in this context is, while section 23 (3) contemplates cancellation of the licence also after considering the objections of the holder of the licence, there is no power of cancellation under section 23 (4). This makes a vast and important distinction in the areas of operation between the two provisions. Section 23 (4) could be availed of only for the purpose of passing an order of suspension and on a proper construction of the said provision, that power is available only pending an enquiry where a *prima facie* case has been made out. Equality before law means that among equals or among persons facing same and similar contingencies, law should be equal and should be equally administered and that the like should be treated alike. It does not mean that things, which are placed differently shall be treated as though they were the same. But, section 23 (4) is not, and could not be construed as a substantive provision for punishment, in addition to section 23 (3), so that it can be stated, that one provision contemplates imposition of a punishment after giving an opportunity to the person concerned and the other provision also contemplates imposition of a punishment but denying an opportunity to the person facing same or similar contingencies. Section 23 (4) is meant to serve a different purpose, namely, suspension pending an enquiry.

G. Gopinath, for Petitioner.

Advocate-General, for Respondents.

S.J. —— *Petition dismissed.*

S. Mohan, J.

A. M. Ramakrishnan *v.*

Mrs. M. Krishna.

11th December, 1981.

C.R.P. Nos. 873 and 3196 of 1981.

Tamil Nadu Bulidings (Lease and Rent Control) Act (XVIII of 1960) *(as amended by Act XXIII of* 1973), *section* 23 (b)—*"Any person aggrieved by an order"—Meaning.*

A landlady applied for eviction of the tenant, on grounds of wilful default in payment of rent and her *bona fide* requirement of the premises for her personal occupation. The Rent Controller held there was wilful default in payment of rent and ordered eviction. He found against the landlady on the other ground. Appeals were filed by both the parties to the Appellate Authority. While the appeal by the tenant was dismissed, the landlady's appeal on the finding as to her personal need was allowed. The tenant preferred the present revision petitions contending *inter alia* that when an order of eviction had been passed on a ground beneficial to the landlady there was no scope for her filing an appeal to the Appellate Authority with regard to the other ground.

Held: Section 23 (*b*) of the Tamil Nadu Buildings (Lease and Rent Control) Act, speaks of, 'any person aggrieved by an order'. This does not mean that the order must be one of dismissal of the petition for eviction. Where by reason of a finding, a person becomes aggrieved, it is well open to him to file an appeal. The appeal was therefore maintainable.

R. N. Kothandaraman, for Petitioner.

R.S. —— *Petition allowed.*

P. R. Gokulakrishnan and
V. Ratnam, JJ.

Kanyakumari Automobiles (P.), Ltd. *v.*
P. Natarajan.

18th March, 1982.

W.A. No. 84 of 1977.

Industrial Disputes Act (XIV of 1947), *section* 11-*A—Misconduct and disobedience by workman — Workman dismissed — Labour Court awarding retrenchment compensation to workman—Management challenging award of retrenchment compensation under Article 226 of the Constitution—Petition dismissed —Appeal by management—Award of Labour Court quashed—Constitution of India* (1950), *Article* 226.

The Labour Court, after considering the evidence on record, same to the conclusion that the management had established misconduct and disobedience by the concerned workman and that the management had also established that the workman was liable to be punished with dismissal of service. Inspite of this finding, the Labour Court treated the removal of the workman from service as one of retrenchment and granted a sum of Rs. 1,450 as retrenchment compensation in lieu of reinstatement. Against this award the management filed a writ petition which was dismissed. On appeal by the management,

Held: To grant relief under section 11-A of the Industrial Disputes Act, there must be a finding that the discharge or dismissal was not justified. Unless the Labour Court gave such a finding, it had absolutely no power to grant any other relief contemplated under section 11-A of the Act such as award of lesser punishment in lieu of discharge or dismissal as the circumstances of the case might require or any other relief. Thus the finding regarding the non-justification of discharge or dismissal is a condition precedent for granting the other reliefs contemplated under section 11-A.

From the facts of the case, it is clear that the Labour Court, in the absence of a finding to the effect that the discharge or dismissal was not justified, had no power to award a compensation as it had done in this case, treating it as a case of retrenchment. The writ appeal is allowed.

O. K. Sridevi, for Appellant.

S.J. ——— *Appeal allowed.*

G. Ramanujam and
G. Maheswaran, JJ.

New India Insurance Company *v.*
P. Sharada.

24th March, 1982.

C.M.A. No. 22 of 1980.

Motor Accident—Caused by rashness and negligence on the part of two or more joint tort-feasors — Affected party claiming compensation—Can proceed against any or all the joint tort-feasors.

A taxi collided with a van resulting in the death of a passenger in the taxi. The widow and the minor children made a claim before the Motor Accidents Claims Tribunal contending that both the drivers of the van and the taxi were responsible for the accident. The van was insured and the taxi was not insured on the date of the accident and it was insured only the next day. The Tribunal passed an award for Rs. 50,000 against the Insurance Company relating to the van as compensation.

On appeal by the Insurance Company,

Held, that the compensation should have been apportioned equally when both the drivers were found responsible. The Insurance Company need pay only Rs. 25,000. The owner of the taxi will be liable for the remaining Rs. 25,000.

Kurian, Arumugham and *Joseph,* for Appellant.

K. Srinivasan and *K. Raghunathan,* for Respondents.

R.S. ——— *Appeal allowed.*

S. Nainar Sundaram, J.

D. Ananda Raj *v.*
The District Munsiff, Tirunelveli.

24th March, 1982.

W.P. No. 722 of 1982, etc.

Tamil Nadu Buildings (Lease and Rent Control) Act (XVIII of 1960) *(as amended by Act XXIII of* 1973)*—Provisions of the Act relating to eviction of tenants, whether constitutionally valid.*

An eviction order was passed against a tenant in occupation of a building on a petition filed by the landlord by the Rent Controller which was confirmed by the higher forum. Then the landlord filed a suit in the civil Court for arrears of rent and obtained a decree. The tenant applied for stay of execution of the order relating to rent arrears. It was granted with certain conditions with which however the tenant did not comply.

Thereafter, the tenant filed a writ petition in the High Court challenging the constitutional validity of the Rent Control Act.

Held, that a tenant having taken advantage of the benefits under the Rent Control Act, without agitating its constitutional validity, cannot at a belated stage question the legality of the Act especially when the eviction proceedings had gone against him.

K. Hariharan, for Petitioner.

The Government Pleader, for Respondent.

R.S. ——— *Petition dismissed.*

T. Sathiadev, J.

Tamil Nadu Electricity Board *v.*
K. Vinayan.

12th February, 1982.

W.M.P. Nos. 15724 to 15726, 15728 of 1981.

Indian Electricity Act (IX of 1910), *sections* 39 *and* 44*—Theft of electric energy and punishment for the same — Board must give the consumers opportunity to make representations before disconnection.*

Held, that tempering with connection or defects said to have been detected on inspection made, cannot result in disconnection of electric supply immediately. Unless the Board extends an opportunity to the concerned consumers to make their representations on what the Board claims to have detected and thereafter passes an order with reasons, it cannot proceed to take action in accordance with the provisions of the Act, the rules framed thereunder and the terms conditions of supply of energy.

S. Ramalingam, for Petitioner.

V. Krishnan, for Respondent.

R.S. ——— *Injunction made absolute.*

K. B. N. Singh, CJ. and
S. Mohan, J.

In the matter of
C. S. Hariharan, In re.
In the matter of
S. B. Pathak, In re.

16th March, 1982.

R.C. Nos. 12 and 13 of 1980.

Chartered Accountants Act (XXXVIII of 1949), *section* 21 (6)—*Issue of false certificates by Chartered Accountants to obtain licences—Guilt accepted by concerned Chartered Accountants — Reprimand under section* 21 (6) *held sufficient.*

Licences to import tin plates, stainless steel sheets etc., could be granted only on receipt of certificates granted by Chartered Accountants that the raw materials previously imported had been utilised by the concerned firm. It was on the basis of the certificates appended to by the Chartered Accountants, respondents herein, M|s. Consules Industries, Madras obtained import licences, but it was later detected by the Deputy Inspector General of Police that the Certificates regarding consumption of imported raw materials and the book value of the production were false and thereafter the matters were enquired into by the Disciplinary Committee of the Council of the Institute of Chartered Accountants of India. In both the cases, the Chartered Accountants accepted their guilt. These two references under section 21 (5) of the Chartered Accountants Act, 1949, were made by the Council of the Institute of Chartered Accountants of India.

Held, it was manifest that the respondent in each of these cases was guilty of professional misconduct as he had failed to obtain sufficient information to warrant the expression of an opinion as admitted by the respondents themselves. Having regard to the fact that the respondents had fairly accepted the guilt, the High Court did not propose to impose the extreme penalty of removal from membership of the Institute, either permanently or for a term, but considered that a reprimand as provided under section 21 (6) (*b*) of the Act would meet the ends of Justice. Accordingly the High Court answered the references.

T. V. Ramanathan, for Applicant.

P. Ananthakrishnan Nair, for Respondents.

S.J. ——— *References answered as above.*

P. R. Gokulakrishnan, O.CJ. and
V. Ratnam, J.

Indian Bank, Tiruvannamalai, Represented by the Assistant General Manager *v.*
V. A. Balasubramania Gurukkal.

31st March, 1982.

C.R.P. No. 964 of 1981.

(A) *Banking Regulation Act (X of* 1949)—*Nationalised Bank—Functioning under the Banking Regulation Act—Subject to the control of the Reserve Bank of India—Rates of interest charged, if within the scope of Usurious Loans Act.*

(B) *Usurious Loans Act (X of* 1918)—*Banks functioning under the Banking Regulation Act — Charging of interest — Governed by the Reserve Bank of India Circulars.*

A nationalised bank advanced a medium term loan to three farmers who agreed to pay 4½% per annum interest over and above the official rate of 10½% of the Reserve Bank of India. The loan was not repaid and the Bank instituted a suit for the recovery of the loan. The District Munsif applied the provision of the Usurious Loans Act on the ground that the defaulters were agriculturists and that a simple interest of 10½% would be reasonable and granted a decree accordingly. On appeal the Sub-Judge agreed with the trial Judge and dismissed the appeal. The bank preferred a Revision to the High Court and the matter was placed before a Bench.

Held: No particular interest reasonable or excessive had been prescribed under the Usurious Loans Act. It did not in any manner, control or regulate the charging of the rates of interest but it was intended merely to afford relief from a claim of excessive interest. The spheres of the operation of the Usurious Loans Act and the Banking Regulation Act were very different. The latter alone regulat-

ed the rate of interest on advances by the nationalised banks, and there was no inconsistency between the two enactments.

Considering that the bank was obliged to charge a rate of interest according to Reserve Bank of India Circulars, the recovery of the amounts as claimed by the petitioners from the agriculturists would be justified without the application to the provisions of the Usurious Loans Act to the transaction in question. The suit was decreed as prayed for.

M|s. Iyer and Dolia, for Petitioner.

R. Shanmugam, for Respondent.

R.S. —— *Petition allowed.*

Mohan, J.

Management of Sri Sabari Mills Ltd., Trichy-21 *v.* M. Kulandai.

25th March, 1982.

C.M.A. No. 654 of 1980.

Workmen's Compensation Act (VIII of 1923), *section* 3 — *Watchman — Beaten by people while on duty—Hospitalised for 68 days — Disablement suffered — Claim for compensation against management preferred before Additional Commissioner for Workmen's Compensation — Compensation of Rs.* 17,640 *awarded to workmen — Appeal by management—Beating held to be an accident and compensation reduced to Rs.* 10,000.

The respondent was working as a watchman in the mills of the appellant. On 30th November, 1978, he was attacked by four persons who entered the mill premises and assaulted him with lathis. He was an in-patient in a hospital for 68 days. He filed an application for compensation before the Additional Commissioner for Workmen's Compensation, Tiruchirapalli, who held that the accident took place in the course of employment and awarded a compensation of Rs. 17,640 to the workman. The management filed an appeal and contended that what happened was not an accident and that the compensation awarded was high.

Held: It was undoubtedly an accident because it was an unexpected event happening without design. The beating was certainly an accident within the meaning of the law. The interest of justice would be met by awarding a compensation of Rs. 10,000 in full quit of the claims of the respondent.

T. S. Rengarajan, for Appellant.

Rajan, for Respondent.

S.J. —— *Appeal partly allowed.*

Ramanujam and Maheswaran, JJ.

T. P. Nithyanandan *v.* T. P. Balakrishnan.

29th March, 1982.

A.S. No. 713 of 1977.

Evidence—Suit for recovery of money—Allegation by plaintiff of removal by defendants of iron safe, copper and brass vessels and crops —Plaintiff examining himself as D.W. 4—Trial Court holding mere evidence of plaintiff not adequate — Appeal by plaintiff — Trial Court's view upheld by High Court.

The plaintiff filed suit for recovery of Rs. 14,320 being the value of an iron safe valued at Rs. 500, brass and copper vessels valued at Rs. 1,500 and crops valued at Rs. 12,320 all alleged to be carried away by the defendants from the custody of the plaintiff. The defendants denied removal by them of any iron safe, brass and copper vessels or the crops as alleged by the plaintiff. Before the trial Court, the plaintiff examined himself as P.W. 4 and no other independent evidence had been adduced. However, the trial Court was not inclined to give any credence to the evidence of D.W. 4, and therefore, it held that the plaintiff had not established his claim in the suit. The plaintiff appealed to the High Court.

Held: When the defendants had, in their written statement, specifically denied the charge of removal of the iron safe, copper and brass vessels and the crops, the onus was on the plaintiff to establish his case that the defendants stealthily removed the above items. Though it was possible that the iron safe and vessels might have been removed stealthily, the various crops in the various fields could not be cut and carried away stealthily in one day. If really the defendants had cut and carried away the crops, it would have been very easy for the plaintiff to prove the same by examin-

ing anyone of the persons who were actually employed in harvesting the crops and for its removal or transport. Except the interested testimony of the plaintiff as P.W. 4, there was no further evidence at all. After a due consideration of the matter, the High Court was inclined to agree with the finding of the Court below, that the plaintiff had not established his claim as against the defendants.

M. Kalyanasundaram, for Appellant.

S.J. ——— *Appeal dismissed.*

Nainar Sundaram, J.

Kumaraswamy *v.*

Land Commissioner.

8th March, 1982.

W.P. Nos. 1936 and 344 of 1979.

Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act (LVIII of 1966), *sections* 18 (1) *and* 82*—Notification under section* 18 (1)*—Revision to Land Commissioner against notification — Maintainability — Powers of the Land Commissioner.*

The power of revision vested with the Land Commissioner under section 82 of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act is very wide. It empowers the Land Commissioner to satisfy himself as to the regularity of the proceedings or the correctness, legality or propriety of any decision or order passed thereunder and it further states that if in any case it appears to the Land Commissioner that any such proceeding, decision or order should be modified, annulled, reversed or remitted for consideration, he may pass orders accordingly. The Land Commissioner can definitely direct a modification or annulment of the notification under section 18 (1), if there is a warrant for it in law and, on facts. But the contingencies under which, and the facts on which, he can exercise such powers will depend upon each case. Hence, it is not possible and it is not necessary for the Court to delineate the contingencies under which and the facts on which the Land Commissioner should exercise the powers of revision with reference to the notification under section 18 (1). That the powers of the revisional authorities under the Act are very wide has been recognised in 87 L.W. 808, dealing with section 81 (before its repeal by Tamil Nadu Act XXXIX of 1972) ,which provided for revision to the Land Tribunal in respect of certain proceedings. The language of the repealed section 81 was practically the same as the language employed, in section 82 of the Act. A similar view has been taken in W. P. No. 822 of 1979, Order dated 13th February, 1979.

In some cases, the Land Commissioner has taken note of the delay in preferring the revisions. There is a possibility that the parties had been labouring under a misconception with reference to the competency of the revisions. The very view of the Land Commissioner was that such revisions were incompetent. Though the rules prescribe 60 days from the date on which the proceedings, decision or order, to which the application relates, was communicated to the applicant as the time-limit for preferring a revision and further give a power to the Land Commissioner to condone delay to the extent of 30 days; there is a power of *suo motu* revision as to application found to have had been presented beyond the time allowed. But, if the revision had been preferred even beyond the time prescribed for *suo motu* revision, it is needless to point out that the Land Commissioner will decide this point also and entertain it on merits, only if it had been preferred within the time for *suo motu* revisions.

V. Sridevan, for Petitioner.

Sadanand, Assistant-Government Pleader, for Respondent.

R.S. ——— *Petition allowed and remanded.*

Swamikkannu, J.

Messrs. Savani Transport (P.), Limited *v.*

L. Rajamanikam.

2nd April, 1982.

C.R.P. No. 2782 of 1981.

Tamil Nadu Buildings (Lease and Rent Control) Act (XVIII of 1960), *section* 10 (3) (a) (iii)*—Petition for eviction — Landlord partner in a firm—Landlord carrying on business in fertilizer in firm's building—Landlord requiring his own building for carrying on the fertilizer business—Landlord's requirement whether* bona fide.

The landlord was carrying on fertilizer business in the premises at Ganapathi Village which

premises was owned by a partnership firm of which the landlord was a partner. The tenant contended that this would preclude the landlord from getting possession of a building owned by him exclusively at Coimbatore, because the provision under section 10 (3) (*a*) (*iii*) of the Tamil Nadu Act XVIII of 1960, stood in the way of the landlord getting the same. The lower appellate authority held that the requirement of the building by the landlord was *bona fide*. The tenant filed a revision to the High Court.

Held: The premises at Coimbatore could be used by the landlord|respondent either for extension of his business or if he wants to vacate the premises at Ganapathi Village once for all and establish his business at the premises at Coimbatore. It was the sweet will and pleasure of the landlord|respondent and no law could prevent a businessman from shifting his business to a place of his own from a place which was proved to be belonging to a partnership firm of which the landlord|respondent was a partner. Merely because he was a partner of that partnership which owned the premises in which the business was carried on for the present, it did not strip him of the right to have his own building at Coimbatore for carrying on the business. There was absolutely no infirmity in the judgment delivered by the appellate authority.

S. Udairaj Gulecha, for Petitioner.

S.J. ——— *Revision dismissed*.

Singaravelu, J.

Karunanidhi *v.*
Ayrunissa.

19*th March*, 1982.

C.R.P. No. 1271 of 1981.

Tamil Nadu Cultivating Tenant's Protection Act (XXV of 1956), *section* 3—*Eviction petition against tenant on allegation of non-payment of rent — Power Agent of tenant admitting arrears—Time granted by Revenue Court to pay arrears till* 23*rd March,* 1981—*Petition posted to* 24*th February,* 1981—*Arrears not deposited—Extension of time not asked for—Tenant absent—Eviction ordered—Order whether liable to be set aside.*

The tenant would not pay a pie of arrears within the time prescribed nor make an application for extension of time. In all these cases, more often these tenants are in the hands of agents or middlemen, who represent them in Revenue Courts with a power of attorney. Further, even after the preliminary order, the amounts are not deposited and the parties or agents conveniently absent themselves on the date of hearing and then conveniently file a revision petition stating that they were all along ready and willing to pay the rent. The alleged readiness had not been translated into practice and it is stated that subsequent arrears have also fallen due. True, the Act is intended to prevent unreasonable eviction of tenants and to give them a last opportunity to pay the arrears at least after the filing of the eviction petition and continue in possession. It is certainly not intended to harass the land-owners by playing hide and seek with them and drag on the matter indefinitely. The Act should not be allowed to be misused or abused by dishonest and recalcitrant tenants who disobey the order directing them to pay the ascertained or admitted arrears. After the non-compliance of the preliminary order, no further notice or inquiry is contemplated. It is for the tenant to show his *bona fides* and come forward with an application for extension of time within the time stating the special circumstances if any for not complying with the order; of course an application for extension of time may be made by the tenant, before the expiry of the period and after showing his *bona fides* by making a subsequent payment of arrears.

K. Ramamurthy, for Petitioner.

S. Rajagopal, for Respondent.

R.S. ——— *Petition dismissed*.